

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 205 through 206

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**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

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TITLE 7
Agriculture, Commissioner of

JULY 1996

STAFF COMMENT: Article 7-12 contains all new material and is not underscored so as to improve readability.

ARTICLE 7-12

ANHYDROUS AMMONIA REGULATION

Chapter
7-12-01 Anhydrous Ammonia Standards

**CHAPTER 7-12-01
ANHYDROUS AMMONIA STANDARDS**

Section	
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7-12-01-01. Adoption of standards.

1. The American national standard safety requirements for the storage and handling of anhydrous ammonia "K61.1 - 1989" is hereby adopted; except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of this standard are adopted as amended by North Dakota Century Code section 19-20.2-01.
2. The 1995 edition of the American society of mechanical engineers boiler and pressure vessel code, section II; section V; section VIII, division 1; and section IX are hereby adopted and incorporated by reference as a part of this article.
3. The 1995 edition of the national board inspection code, an American national standard, is hereby adopted and incorporated by reference as a part of this article.
4. The American society for nondestructive testing standard "SNT-TC-1A" is hereby adopted and incorporated by reference as a part of this article.
5. The 1995 edition of ASME B31.3, the American national standard for chemical plant and petroleum refinery piping, is hereby adopted and incorporated by reference as a part of this article.
6. The 1995 edition of ASME B31.5, the American national standard for refrigeration piping, is hereby adopted and incorporated by reference as a part of this article.
7. The American petroleum institute standard 620, recommended rules for design and construction of large, welded, low-pressure storage tanks, is hereby adopted and incorporated by reference as a part of this article.

History: Effective July 1, 1996.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-02. Definitions. The following definitions are in addition to those thirty-four definitions listed in "ANSI K61.1 - 1989", section 2. Note that part 2.5 of section 2, definitions, is altered by North Dakota Century Code section 19-20.2-01.

1. "Accident or incident" means an event involving nurse tanks or storage containers and their appurtenances which results in damage to pressure vessels or their appurtenances, or both, requiring repair. Leakage or discharge of more than one hundred pounds [45.36 kilograms] of anhydrous ammonia will be considered an incident.

2. "Anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.
3. "DOT specifications" means regulations of the United States department of transportation published in 49 CFR Chapter 1.
4. "Existing anhydrous ammonia storage facility" means any permanent anhydrous ammonia storage facility constructed before July 1, 1985.
5. "Hydrostatic test" means a pressure test of a storage tank using water as a medium to the standards referenced in the national board inspection code.
6. "Labeled" means there is attached a label, symbol, or other identifying mark of a nationally recognized testing laboratory which makes periodic inspections of the production of such equipment and whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner.
7. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the various governmental jurisdictions who are charged with the enforcement of the provisions of the American society of mechanical engineers code.
8. "New anhydrous ammonia storage facility" means any permanent anhydrous ammonia storage facility constructed after July 1, 1985.
9. "Nurse tank" means an implement of husbandry meeting the definition of section 2.2. of the ANSI K61.1 standard.
10. "Refrigerated storage facility" means an anhydrous ammonia storage facility utilizing tanks for the storage of anhydrous ammonia under refrigerated conditions.
11. "Registered pressure vessel" means a permanent storage container inspected by the chief boiler inspector and identified by a decal having a unique identification number, preceded by the letters "AA".
12. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
13. "Retail and storage facility" means an anhydrous ammonia storage facility selling or intending to sell anhydrous ammonia to the general public.

14. "Secondhand pressure vessel" means a pressure vessel of which both the location and the ownership have been changed after primary use.
15. "SNT-TC-1A" means the society for nondestructive testing standard for nondestructive testing of pressure vessel welds, material, and the testing of personnel making nondestructive tests.
16. "Storage facility" means an anhydrous ammonia storage facility transferring or filling anhydrous ammonia for its own use and not for sale to the general public.
17. "Tank car" means a pressure vessel designed to be permanently attached to or forming a part of a railcar structure in compliance with the department of transportation specifications (formerly ICC specifications), and having the approval of the association of American railroads.
18. "Wet fluorescent magnetic particle test" means a nondestructive test of interior tank welds using a magnaflux procedure with fluorescent lighting to detect surface cracks, using SNT-TC-1A standards.

History: Effective July 1, 1996.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-03. Administration and enforcement.

1. The administration and enforcement of North Dakota Century Code chapter 19-20.2 and this chapter is the responsibility of the commissioner of agriculture.
2. The initial and periodic inspection of anhydrous ammonia storage facilities is the responsibility of the commissioner of insurance.
3. Owners, users, or vendors of new installations made after July 1, 1995, will not be issued an operator's license until the completed anhydrous ammonia storage facility site has been inspected by the chief boiler inspector and complies with this chapter and North Dakota Century Code chapter 19-20.2.
4. The commissioner of agriculture will inform the commissioner of insurance of new applications for operating licenses and of any new operating licenses issued.
5. The commissioner of insurance will inform the commissioner of agriculture of violations of this chapter and violations of North Dakota Century Code chapter 19-20.2.

6. Owners, users, or vendors of anhydrous ammonia must notify the chief boiler inspector of storage containers to be used in North Dakota or brought into the state for temporary purposes.
7. Containers found, after inspection, to be defective or otherwise unsafe to operate, or disqualified by legal requirements, must be rejected by the chief boiler inspector, who may order the container immediately depressurized and taken out of service.
8. Defective conditions not posing an immediate hazard, noted during initial and periodic inspections, must be corrected in a timely manner. The time allowed for corrections to take place will be at the discretion of the chief boiler inspector.
9. Operating licenses must be posted in a conspicuous place at the plant or office of the owner, user, or vendor and available for inspection during regular business hours.
10. Anyone spilling one hundred pounds [45.36 kilograms] or more of anhydrous ammonia must report this as soon as possible to the national response center at 1-800-424-8802, to the North Dakota division of emergency management, and to the appropriate county emergency manager.
11. The commissioner of agriculture may require compliance with any local siting requirements for the issuance or maintenance of an operating license.

History: Effective July 1, 1996.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-04. General requirements.

1. **Frequency of inspection.** Existing anhydrous ammonia storage facilities must be inspected once every five years by the chief boiler inspector. New anhydrous ammonia storage facilities must be inspected by the chief boiler inspector prior to any license being issued, and at an interval of once every five years thereafter.
2. **Minimum requirements for new storage containers other than refrigerated storage containers.**
 - a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered;

- c. Metal specified tensile strength not exceeding seventy-five thousand pounds per square inch [517500 kilopascals];
 - d. Head and shell materials for storage containers made in accordance with fine grain practice;
 - e. All welds postweld heat treated after construction, for all tanks ordered or installed after January 1, 1996; and
 - f. Storage containers exceeding six thousand water gallons [22712.4 liters] in capacity must be equipped with a manhole opening.
3. **Minimum requirements for secondhand and reinstalled storage containers other than refrigerated storage containers.**
- a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered;
 - c. Metal specified tensile strength not exceeding seventy-five thousand pounds per square inch [517500 kilopascals];
 - d. Heat treated heads or hot formed heads and this indicated on the manufacturer's data report, in lieu of the entire vessel welds being postweld heat treated; and
 - e. All postconstruction repairs and alterations made only by a valid holder of an "R" certificate of authorization from the national board.
4. **Exception for reinstalled storage containers.** National board registration is not required for reinstalled anhydrous ammonia storage containers, when the container is relocated within North Dakota, but the ownership does not change.
5. **Exception for secondhand and reinstalled storage containers.** Metal specified tensile strength may exceed seventy-five thousand pounds per square inch [517500 kilopascals] for secondhand and reinstalled anhydrous ammonia storage containers when the container is relocated within North Dakota and the container has been wet-fluorescent magnetic particle tested by a qualified firm and no significant stress corrosion cracking has been found, as determined by the chief boiler inspector.
6. **Requirements for refrigerated storage containers.** Refrigerated storage containers must be constructed in accordance with section 7 of the 1989 ANSI K61.1 standard. All refrigerated ammonia piping used with refrigerated systems

must conform to ASME B31.5, American national standard for refrigerated piping.

7. **Hydrostatic test procedures.** Hydrostatic test procedures must comply with the specific requirements of the national board inspection code. The test must be witnessed by and be under the control of the chief boiler inspector. At least one calibrated gauge must be used on the container tested. All air must be vented prior to making the test.
8. **Wet-fluorescent magnetic particle test procedures.** Wet-fluorescent magnetic particle test procedures must comply with SNT-TC-1A procedures and the specific requirements of ASME code, section VIII. The person conducting the test must be at least a level II technician, with that person's supervisor being a level III technician. This test may be witnessed by the chief boiler inspector, at the chief boiler inspector's discretion.
9. **Welded repairs or alterations, or both, to pressure containers.** Welded repairs or alterations, or both, to pressure containers must only be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
10. **Requirements for welded piping.** Welders making welds to anhydrous ammonia system piping must be certified in accordance with ASME code, section IX, and must furnish a current QW-484 qualification form upon request. The welder must weld only within the range of the welder's qualifications. Defective weld must be rejected by the chief boiler inspector.
11. **Requirements for reinstalled containers and systems.** When a permanent storage container is moved and reinstalled, all fittings and appurtenances must comply with all requirements for new installations.
12. **Prohibitions.** In addition to the prohibitions covered by North Dakota Century Code section 19-20.2-08.1, the following are prohibited:
 - a. Unattended filling of storage containers and nurse tanks;
 - b. Making repairs or addition of appurtenances directly to pressurized storage containers and nurse tanks;
 - c. Painting or obscuring of ASME data plates on containers;
 - d. Painting of hydrostatic, safety and safety relief valves; and

- e. Filling nonrefrigerated storage containers and nurse tanks beyond the filling densities permitted by ANSI K61.1, section 5.9.1.

History: Effective July 1, 1996.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-05. Specific requirements for nonrefrigerated anhydrous ammonia storage facilities.

1. Facility siting requirements:

- a. The siting of the facility must comply with North Dakota Century Code section 19-20.2-05 and this compliance must be verified by the chief boiler inspector.
- b. The facility must be properly licensed by the board of county commissioners in which the facility is located and by the commissioner of agriculture.
- c. The facility must be accessible to emergency vehicles.
- d. A facility identification sign must be displayed stating the name, address, and phone number of the nearest representative, agent, or owner. An emergency phone number must also be displayed. This sign must be posted near the entrance of the facility. Letters must be at least two inches [50.8 millimeters] high, and the sign visible from no less than fifty feet [15.24 meters].

2. Storage container requirements:

- a. The ASME manufacturer's data report must be provided when requested by the chief boiler inspector, should repairs, alterations, or metallurgical data be required.
- b. The container must be ASME constructed, if installed after November 1, 1987.
- c. The container must be national board registered, if installed after November 1, 1987.
- d. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.
- e. Container markings and/or decals must meet the requirements of ANSI K61.1.
- f. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection

code and the proper documentation must be available for inspection if requested by the chief boiler inspector.

- g. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.
- h. Supports and saddles adequately must support the container as required by ANSI K61.1, and there must be no concentration of excessive loads on the supporting portion of the shell.
- i. A container liquid level gauge must be installed and be operable.
- j. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.
- k. Safety valve manifolds meeting the requirements of ANSI K61.1 must be installed between the container and the safety valves required to be installed.
- l. Container safety valves must be ASME and national board stamped.
- m. Container safety valves must be date current and in operable condition.
- n. Container safety valves must have rain caps in place.
- o. Installed safety valve capacity must comply with appendix B of ANSI K61.1. The installed capacity must be sufficient with a manifold or manifolds in operation as designed by the manufacturer.

3. Requirements for piping and appurtenances:

- a. Excess flow valves must be installed at all tank openings, or in lieu thereof, approved quick-closing internal valves may be installed which, except during operating periods, must remain closed.
- b. Main stop valves must be labeled for anhydrous ammonia service and be in good operating condition.
- c. Main stop valves must be labeled or color coded to indicate liquid or vapor service.
- d. System piping must be at least schedule 40 where welded and schedule 80 where threaded. Threaded and seal welded connections must be at least schedule 80.

- e. Welded piping must be welded by an ASME section IX certified welder, and proof of the certification must be available if requested by the chief boiler inspector.
- f. Threaded piping must not be used underground for new installations.
- g. Pipe and pipe fittings must not be cast iron, brass, copper, zinc, or galvanized.
- h. Flexible fittings or expansion joints, or both, must be used where necessary.
- i. Underground piping must be installed using approved corrosion protection.
- j. For new systems, the system piping must be pressure tested at the working pressure of the system and the integrity of the system proven.
- k. Approved bulkheads or breakaways, or both, must be provided at nurse tank fill stations. Emergency shutoff valves must be in place on liquid and vapor piping before the bulkhead or breakaways, or both. Approved cables must be connected to the emergency shutoff valves and these cables can be activated both at the valves and at a remote location. Breakaway action will close the valves.
- l. Approved bulkheads and breakaways must be provided at truck unloading stations. There must be an emergency shutoff valve on the vapor piping on the system side of the bulkhead and a backcheck valve is installed on the liquid piping on the system side of the bulkhead. Approved cables must be connected to the emergency shutoff valve and these cables can activate the valve both at the valve and at a remote location.
- m. Date current hydrostatic relief valves must be installed wherever liquid may become trapped between closed valves.
- n. Transfer hoses must be date current and not be weather checked or cut to expose the cords.
- o. Transfer pump, if used, must be rated for anhydrous ammonia service.
- p. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the discharge side of the pump, before the bypass piping loop. This gauge must be a liquid filled gauge.

- q. Compressors, if used, must be rated for anhydrous ammonia service.
- r. Approved pressure gauges and stop valves must be installed on the suction and discharge sides of the compressor.
- s. An approved date current pressure relief valve of sufficient capacity must be installed on the discharge side of the compressor prior to any shutoff valve.
- t. Locks and lock boxes must be installed on the main system stop valve, when the facility is unattended.
- u. The system must be leak free in operation.
- v. Adequate provisions for protection of exposed piping and appurtenances from moving vehicles at the facility must be in place.
- w. Loading platforms or other equivalent method must be used to allow safe filling of nurse tanks. Climbing on tires is not permitted for filling nurse tanks.

4. Requirements for safety equipment:

- a. The following personal safety equipment must be available at a readily accessible location:
 - (1) Two full face gas masks with spare date current ammonia canisters;
 - (2) One pair of protective gloves impervious to ammonia;
 - (3) Chemical splash goggles that are ANSI Z87.1-1989 rated;
 - (4) One pair of protective boots impervious to ammonia;
 - (5) One "slicker suit" impervious to ammonia;
 - (6) Safety shower or open container holding at least one hundred fifty gallons [567.8 liters] of clean water; and
 - (7) Adequate fire extinguishers.
- b. A telephone, or other method of communication, is required to be on location at each anhydrous ammonia storage facility during transfer operations.

History: Effective July 1, 1996.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-06. Specific requirements for nurse tanks.

1. The ASME manufacturer's data report must be provided, if requested by the chief boiler inspector, should repairs or alterations become necessary.
2. The container must be ASME constructed, if installed after November 1, 1987.
3. The container must be national board registered, if installed after November 1, 1987.
4. The data plate must be readable and not painted over or obscured.
5. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.
6. Container markings and decals must meet the requirements of ANSI K61.1:
 - a. "1005" DOT decal must be in place on sides and heads.
 - b. "ANHYDROUS AMMONIA" decal must be in place on sides and heads.
 - c. Legible transfer and safety decals must be in place.
7. The container must be numbered or otherwise identified.
8. A department of transportation-approved slow moving vehicle sign must be in place and in good condition.
9. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper documentation must be available for inspection if requested by the chief boiler inspector.
10. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.
11. A container liquid level gauge must be installed and must be operable.
12. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.
13. Container safety valves must be ASME and national board stamped.

14. Container safety valves must be date current and in operable condition.
15. Container safety valves must have rain caps in place.
16. The transfer hose must be date current and not be weather checked or cut to expose the cords. If the transfer hose is not installed on the nurse tank, a record of the age, condition, and user of the transfer hose must be maintained at the office of the facility.
17. An "ACME" type fitting must be used to secure the transfer hose.
18. Protective gloves and Z87 rated goggles must be in a safety kit attached to the container or assigned to each nurse tank when the container is filled. If the gloves and goggles are assigned, a record of this assignment must be maintained at the office of the facility.
19. Five gallons [18.93 liters] of clean water in a container must be carried on the nurse tank.
20. A hydrostatic relief valve or approved built-in hydrostatic relief must be installed at the main liquid stop valve. This hydrostatic relief valve must be date current and equipped with a rain cap.
21. Protective caps must be in place for the main liquid and vapor connections.
22. Excess flow valves must be in place on the liquid and vapor connections at the tank. Excess flow valves may be incorporated into the main stop valves on the tank.
23. The wagon tires must be in a safe and serviceable condition, with no cords showing.
24. The wagon must be equipped with two suitable safety chains and a hitch pin.
25. The wagon tongue and undercarriage must be in a condition to provide safe transport.
26. The pressure vessel and appurtenances must be leak free in service.

27. Fittings and safety valves must be protected from physical damage, such as rollover, by roll cages or other protective devices.

History: Effective July 1, 1996.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-07. Documented training.

1. Any person handling, transferring, transporting, or otherwise working with anhydrous ammonia at anhydrous ammonia storage facilities must be competent in safe operating practices and be able to take appropriate actions when faced with minor leaks as well as with emergency conditions.
2. Any person making, breaking, or testing any ammonia connection, transferring ammonia, or performing maintenance or repair on an ammonia system under pressure, at anhydrous ammonia storage facilities, must wear protective gloves and chemical splash goggles.
3. Documented training must occur initially and then at intervals of not less than once per year for those persons handling, transferring, transporting, or otherwise working with anhydrous ammonia at anhydrous ammonia storage facilities. Documentation must consist of signed forms indicating the type of training, the date the training occurred, the persons trained, and the supervisor or training coordinator. Signed forms must be kept on file for at least three years and made available for review by the chief boiler inspector and the commissioner of agriculture during normal business hours.
4. Training may include audio and video media, demonstrations and lectures, but must include actual hands-on training for those persons initially required to handle, transfer, transport, or otherwise work with ammonia at anhydrous ammonia storage facilities. The type and amount of training must be consistent with the duties and responsibilities of the person at a particular storage facility. Personnel must be trained for and designated to act in emergency conditions.

History: Effective July 1, 1996.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-08. Alternate procedures for transferring anhydrous ammonia directly from cargo tanks to nurse tanks.

1. Cargo tanks must have current United States department of transportation certification and container labeling and proof

of such certification must be furnished to the commissioner of agriculture initially and within thirty days of the recertifications required by the department of transportation.

2. Adequately sized wheel chocks must be used to prevent movement of both nurse tanks and cargo tanks prior to the start of any transfer operations.
3. Cargo tanks must have all safety equipment required by ANSI K61.1 - 1989:
 - a. At least five gallons [18.93 liters] of clean water in a container;
 - b. One pair of protective gloves impervious to ammonia;
 - c. A full facepiece gas mask with an ammonia canister and at least one spare canister; and
 - d. Chemical splash goggles.
4. Nurse tanks must be equipped with all safety equipment required by ANSI K61.1 - 1989:
 - a. At least five gallons [18.93 liters] of clean water in a container;
 - b. A legible decal depicting step-by-step ammonia transfer instructions; and
 - c. A legible decal depicting first-aid procedures to follow if injured by ammonia.
5. Transfer operations must take place:
 - a. Only on firm, well-prepared, level surfaces;
 - b. Only during daylight hours;
 - c. Only on the owner's or consignee's own property;
 - d. At least fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline;
 - e. At least four hundred fifty feet [137.16 meters] from any place of public assembly or residence;
 - f. At least seven hundred fifty feet [228.6 meters] from any institutional residence; and
 - g. No closer than one mile [1.61 kilometers] from any city limits.

6. Initial written notification of intent to transfer anhydrous ammonia from any cargo tank to nurse tanks shall be given to the board of county commissioners in the county in which transfer operations will take place. This notification must be made by the owner or the consignee.
7. Any additional requirements of the local jurisdiction (county and township) must be complied with fully.

History: Effective July 1, 1996.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

TITLE 32
Cosmetology, Board of

JULY 1996

CHAPTER 32-03-01

32-03-01-12. Application for license to practice cosmetology for the homebound. ~~Any person, firm, association, corporation, partnership, and other entity~~ All licensed cosmetologists desiring to provide cosmetology services for the homebound shall make application to the board for a homebound license and meet the following requirements:

1. Possess a valid manager-operator license.
2. Register all clients with the board office.
3. ~~Provide a doctor's certificate or~~ Be provided a certificate from a health official, doctor, or nurse stating that the client is homebound and the certificate must state provide the approximate length of time the client will be homebound.
4. ~~Have a kit that contains~~ Possess a kit and present the kit for inspection by a board-approved inspector. The kit must contain the following:
 - a. Manager-operator license;
 - b. Copy of rules of sanitation;
 - c. Eyewash;
 - d. First-aid kit;
 - e. Portable drain board;
 - f. Twelve combs and twelve brushes;

- g. Closed container for soiled towels and other linens that need to be laundered;
 - h. Photo identification; and
 - i. Disinfectant solution.
5. Comply with all rules of disinfection for combs, brushes, tools, and other equipment as provided in section 32-02-01-10.
 6. Pay-an-initial ~~The~~ fee for a homebound license ~~of-seventy-five~~ is fifty dollars ~~or-a-renewal-fee-of-twenty-five-dollars~~ per year and yearly inspections must be coordinated with the board office.
 7. This rule is subject to the exceptions contained in North Dakota Century Code section 43-11-02.

History: Effective February 1, 1996; amended effective July 1, 1996.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-13, 43-11-13.2, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-28

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 32-03-01-12 AS ADOPTED BY THE STATE BOARD OF COSMETOLOGY EFFECTIVE FEBRUARY 1, 1996.

The committee objects to this rule because the committee deems it to be unreasonable, arbitrary, or capricious. The committee believes this rule exceeds the intent of the Legislative Assembly by unduly restricting the availability of cosmetology services to homebound persons.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective May 29, 1996.

General Authority: NDCC 28-32-03.3

TITLE 33
State Department of Health

JULY 1996

CHAPTER 33-03-24.1

33-03-24.1-10. Fire safety.

1. The facility shall comply with the national fire protection association life safety code, 1988 edition, chapter twenty-one, residential board and care occupancy, slow evacuation capability, or a greater level of fire safety.
2. Fire drills must be held monthly with a minimum of twelve per year, alternating with all workshifts. Residents and staff, as a group, shall either evacuate the building or relocate to an assembly point identified in the fire evacuation plan. At least once a year, a fire drill must be conducted during which all staff and residents evacuate the building.
3. Fire evacuation plans must be posted in a conspicuous place in the facility.
4. Written records of fire drills must be maintained. These records must include dates, times, duration, names of staff and residents participating and those absent and why, and a brief description of the drill including the escape path used and evidence of simulation of a call to the fire department.
5. Each resident shall receive an individual fire drill walk-through within five days of admission.
6. ~~Any--variation-to-compliance-with-the-fire-safety-requirements must-be--coordinated--with--the--department--and--approved--in writing-by-the-state-fire-marshals.~~

- 7- Residents of facilities meeting a greater level of fire safety must meet the fire drill requirements of that occupancy classification.

History: Effective January 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 23-09.3-19

Law Implemented: NDCC 18-01-03.2, 23-09.3-09

CHAPTER 33-06-01

33-06-01-01. Reportable diseases conditions. All reports of reportable diseases conditions shall be confidential and not open to inspection. The following diseases conditions 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. 3. Botulism.
6. ~~Brucellosis.~~
7. 4. Campylobacter enteritis.
8. ~~Chancroid.~~
5. Cancer, all invasive and in situ carcinomas (except basal and squamous cell skin carcinomas or carcinoma in situ of the cervix uteri).
9. 6. Chickenpox (varicella).
10. 7. Chlamydial infections.
11. 8. Cholera.
9. Cryptosporidiosis.
12. 10. Diphtheria.
13. 11. E. coli 0157:H7 infection.
14. 12. Encephalitis (specify etiology arboviral encephalitides only).
15. 13. Foodborne or waterborne outbreaks.
16. 14. Giardiasis.
17. 15. Gonorrhea.
18. ~~Granuloma inguinale.~~
19. 16. Hantavirus.

- 20- 17. Haemophilus influenzae b.
- 21- 18. Hemolytic uremic syndrome.
- 22- 19. Hepatitis (specify type).
- 23---Herpes-simplex-(genital)-
- 24---Histoplasmosis-
- 25- 20. Human immunodeficiency virus infection.
- 26- 21. Infantile group B streptococcal infection.
- 27- 22. Influenza.
- 28- 23. Lead poisoning.
- 29- 24. Legionellosis.
- 30---Leprosy-
- 31---Leptospirosis-
- 32- 25. Lyme disease.
- 33---Lymphogranuloma-venereum-
- 34- 26. Malaria.
- 35- 27. Measles (rubeola).
- 36- 28. Meningitis (specify---etiology), bacterial (all bacterial species isolated from cerebrospinal fluid).
- 37- 29. Mumps.
- 38- 30. Nosocomial infections outbreaks in institutions.
- 39---Ornithosis-(Psittacosis)-
- 40- 31. Pertussis.
- 41- 32. Plague.
- 42- 33. Poliomyelitis.
34. Q fever.
- 43- 35. Rabies.
- 44---Reye's-syndrome-

- 45- 36. Rocky Mountain spotted fever.
- 46- 37. Rubella.
- 47- 38. Salmonellosis.
- 48- 39. Scabies (~~in-institutions~~) outbreaks in institutions.
- 49- 40. Shigellosis.
- 41. Streptococcus, group A invasive infection (streptococcus, group A isolated from blood, cerebral spinal fluid or other normal sterile site).
- 42. Streptococcus pneumoniae (drug-resistant streptococcus pneumoniae isolated from blood, cerebral spinal fluid or other normal sterile site which is resistant to at least one drug commonly used for treatment).
- 50- 43. Syphilis.
- 51- 44. Tetanus.
- 52- 45. Toxic-shock syndrome.
- 53- 46. Trichinosis.
- 54- 47. Tuberculosis.
- ~~55- --Tularemia-~~
- 48. Tumors of the central nervous system.
- 56- 49. Typhoid fever.
- 50. Unusual disease cluster or outbreak.

History: Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990; January 1, 1991; February 1, 1992; May 1, 1994; January 1, 1995; July 1, 1996.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

CHAPTER 33-06-02

33-06-02-01. Methods-of-reporting Reporting.

1. Printed-forms-available.--The-reporting-forms-will-be-provided by-the-state-department-of-health.--For-these--diseases--which may--require--investigation--to-prevent-spread-of-the-disease, forms-are-available--which--specify--the--patient's--name--and address,--age,--sex,--occupation,--probable-source-of-infection, date-of-exposure,--date-of-onset,--and-name-and-address--of--the person--making--the--report,---For-these-diseases-which-do-not require-investigations,--forms-are-available-for-reporting--the diseases-by-number-only.
2. **Morbidity reports.** Reporting may be conducted by completion of reporting forms, telephonic, electronic, or through other means designated by the state department of health. All morbidity reports must be made as soon as a laboratory test result is positive or a clinical diagnosis is made.
2. Printed forms. Reporting forms will be provided by the state department of health. For those conditions which may require investigation to prevent spread of the condition, forms are available which specify the patient's name and address, age, sex, occupation, probable source of infection, date of exposure, date of onset, and name and address of the person making the report. For those conditions which do not require investigations, forms are available for reporting the conditions by number only.
3. **Telephonic reports.** Physicians shall notify the state health officer by telephone of any unusual outbreak of food infections and poisonings, and of any case of leprosy, bubonic plague, rabies, anthrax, psittacosis, botulism, Rocky Mountain spotted fever, rat-bite--fever, and such other diseases conditions as the state department of health may from time-to-time designate.
4. **Teacher must report suspected cases.** Whenever any school principal or teacher in any private, public, or parochial school has reason to suspect that any pupil is suffering from or has been exposed to any communicable disease condition, such principal or teacher shall send the child home with instructions to see the child's family physician. Any pupil so excluded shall not be permitted to attend school again until the pupil shall present a certificate from a physician licensed to practice medicine in North Dakota or from the local health department stating that the child is not suffering from a communicable disease condition and that it is safe for the child to return to school. Such principal or teacher shall also report any such suspected case to the local

health officer, who, upon receipt of such report, shall use the officer's best judgment as to the necessity for further investigating the case.

5. All medical diagnostic laboratories are required to report any laboratory test result (serological, culture, etc.) which may be interpreted as indicative of any of the reportable conditions to the state department of health. Test results from specimens sent by in-state laboratories to out-of-state laboratories are also required to be reported.
6. In addition to reporting requirements specified under subsection 5, mandatory reporters include:
 - a. All physicians and other health care providers administering screening, diagnostic, or therapeutic services.
 - b. Hospitals, including those providing inpatient or outpatient services, or both.
 - c. Health care facilities, including basic care facilities and mobile units, providing screening, diagnostic, or therapeutic services.

History: Amended effective July 1, 1996.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

**CHAPTER 33-07-03.1
LONG-TERM CARE FACILITIES**

[Repealed effective July 1, 1996]

STAFF COMMENT: Chapter 33-07-03.2 contains all new material and is not underscored so as to improve readability.

**CHAPTER 33-07-03.2
NURSING FACILITIES**

Section	
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33-07-03.2-24	Housekeeping, Maintenance, and Laundry Services
33-07-03.2-25	Adult Day Care Services
33-07-03.2-26	Secured Units

33-07-03.2-01. Definitions. The following terms are defined for this chapter, chapter 33-07-04.2, and North Dakota Century Code chapter 23-16:

1. "Abuse" for the purposes of this chapter is defined in section 33-07-06-01.
2. "Adult daycare" means the provision of facility services to meet the needs of individuals who do not remain in the facility overnight.
3. "Authentication" means identification of the individual who made the resident record entry by that individual in writing,

and verification that the contents are what the individual intended.

4. "Bed capacity" means bed space designed for resident care, including space originally designed or remodeled for resident beds even though temporarily not used for such purposes. The number of beds to be counted in any resident room is the maximum number for which adequate floor area is provided. In measuring the floor area of resident rooms for the purposes 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. Areas included are:
 - a. All space designed for resident bedrooms even if currently closed or assigned to easily convertible, nonresident uses; and
 - b. Space in areas originally designed as solaria, waiting rooms, offices, conference rooms, classrooms, and such that has necessary fixed equipment (nurses' call, lighting, etc.) and is accessible to a nurses' station exclusively staffed for resident care.
5. "Department" means the state department of health.
6. "Discharge" means movement from a facility to noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.
7. "Emanating services" means services which are provided from a facility to nonresidents.
8. "Facility" means a nursing facility.
9. "Governing body" means the individual or group in whom legal responsibility is vested for conducting the affairs of a private or governmental facility. Governing body includes, where appropriate, a proprietor, the partners of any partnership including limited partnerships, the board of directors and the shareholders or members of any corporation including limited liability companies and nonprofit corporations, a city council or commission, a county commission or social service board, a governmental commission or administrative entity, and any other person or persons vested with management of the affairs of the facility irrespective of the name or names by which the person or group is designated.
10. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.

11. "Licensee" means the legal entity responsible for the operation of a facility.
12. "Medical staff" means a formal organization of licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of medical care.
13. "Misappropriation of resident property" means the willful misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent. Willful for the purpose of this definition means to do so intentionally, knowingly, or recklessly.
 - a. "Intentionally" means to do deliberately or purposely.
 - b. "Knowingly" means to be aware or cognizant of what one is doing, whether or not it is one's purpose to do so.
 - c. "Recklessly" means to consciously engage in an act without regard or thought to the consequences.
14. "Neglect" for the purposes of this chapter is defined in section 33-07-06-01.
15. "Nursing facility" means an institution or a distinct part of an institution established to provide health care under the supervision of a licensed health care practitioner and continuous nursing care for twenty-four or more consecutive hours to two or more residents who are not related to the licensee by marriage, blood, or adoption; and who do not require care in a hospital setting.
16. "Rural area" means an area defined by the United States bureau of the census as a rural area.
17. "Secured unit" means a specific area of the facility that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.
18. "Signature" means the name of the individual written by the individual or an otherwise approved identification mechanism used by the individual that may include the approved use of a rubber stamp or an electronic signature.
19. "Transfer" means movement from a facility to another institutional setting when the legal responsibility for the care of the resident changes from transferring facility to the receiving institutional setting.

20. "Writing" means the use of any tangible medium for entries into the medical record, including ink or electronic or computer coding, unless otherwise specifically required.

History: Effective July 1, 1996.

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

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

33-07-03.2-02. Conflict with federal requirements. If any part of this chapter or chapter 33-07-04.2 is found to conflict with federal requirements, the more stringent shall apply. Such a finding or determination shall be made by the department and shall not affect the remainder of this chapter or chapter 33-07-04.2

History: Effective July 1, 1996.

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

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

33-07-03.2-03. Application for and issuance of license. An entity meeting the definition of nursing facility in this chapter must obtain a license from the department to operate in North Dakota. No person or entity shall establish or operate a facility without first having obtained a license.

1. Any person or entity who owns or leases a facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain an initial license before accepting residents for care or treatment.
 - a. The department shall 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 33-07-04.2.
 - (2) The department has conducted an inspection or investigation of the facility to determine compliance with this chapter and chapter 33-07-04.2.
 - (3) The department has completed an investigation into the fitness of the applicant and determined the applicant to be fit based on the following:
 - (a) Evidence provided by the applicant which identifies that financial resources and sources of revenue for the applicant's facility appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16, this chapter, and chapter 33-07-04.2;

- (b) The applicant has furnished the department with a signed and notarized statement describing and dating every proceeding, within five years of the date of the application, in which the applicant was involved that resulted in a limitation, suspension, revocation, or refusal to grant or renew a nursing facility license or resulted in a ban on medicare or medicaid admissions or a medicare or medicaid decertification action; and
 - (c) The applicant shall furnish a signed and notarized statement to the department describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning 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 nursing facility.
- b. The initial license shall be valid for a period not to exceed one year and shall expire on December thirty-first of the year issued.
2. The department shall issue a renewal license when a facility is in substantial compliance with the provisions of these licensing requirements, as determined by periodic unannounced onsite surveys conducted by the department and other information submitted by the facility upon the request of the department. Renewal licenses shall expire on December thirty-first of each year. The application for renewal must be received by the department with sufficient time prior to the beginning of the licensure period to process.
3. The department may issue a provisional license, valid for a specific period of time not to exceed ninety days, when there are one or more serious deficiencies or a pattern of deficiencies related to compliance with these licensing requirements.
- a. A provisional license may be renewed at the discretion of the department, provided the licensee demonstrates to the department that it has made progress towards compliance and can effect compliance within the next ninety days. A provisional license may be renewed one time.
 - b. When a facility operating under a provisional license notifies the department that it has corrected its deficiencies, the department will ascertain correction.

Upon finding compliance, the department shall issue a renewal license.

4. In the case where two or more buildings operated under the same management are used in the care of residents, a separate license is required for each building.
5. Each license is valid only in the hands of the entity 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. The license must be displayed in a conspicuous place within the facility.
6. The facility shall notify the department in writing thirty days in advance of any of the following changes:
 - a. Transfer or change of ownership.
 - b. Transfer of operating rights, including a lease of the facility where the lessor retains no control of the operation or management of the facility.
 - c. Change in bed capacity.
 - d. Change in the name of the facility.
7. The facility shall notify the department in writing within thirty days of a change in administrator or nurse executive.

History: Effective July 1, 1996.

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

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

33-07-03.2-04. Waiver provision. Any provisions of this chapter or chapter 33-07-04.2 may be waived by the department 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 facility. A waiver may be granted for a specific period of time not to exceed one year and shall expire on December thirty-first of the year issued.

History: Effective July 1, 1996.

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

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

33-07-03.2-05. Access and surveillance by the department. The department may evaluate a facility's compliance with this chapter or chapter 33-07-04.2 at any time through:

1. An announced or unannounced onsite review; or

2. A request for submission of written documentation verifying compliance.

History: Effective July 1, 1996.

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

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

33-07-03.2-06. Plan of correction.

1. A facility shall submit to the department a plan of correction addressing areas of noncompliance with the licensure requirements of this chapter and chapter 33-07-04.2.
2. A plan of correction must include:
 - a. How the corrective action will be accomplished;
 - b. How the facility will identify other residents or portions of the facility having the potential to be affected by the same deficient practice;
 - c. What measures will be put into place or systemic changes made to ensure that the deficient practice will not recur; and
 - d. How the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur.
3. A plan of correction is required within ten calendar days of receipt of the deficiency statement and is subject to acceptance, acceptance with revisions, or rejection by the department.
4. Corrections must be completed within sixty days of the survey completion date, unless an alternative schedule of correction has been specified by the department.

History: Effective July 1, 1996.

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

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

33-07-03.2-07. Governing body. The governing body is legally responsible for the quality of resident care services; for resident safety and security; for the conduct, operation, and obligations of the facility; and for ensuring compliance with all federal, state, and local laws.

1. The governing body shall establish, cause to implement, maintain, and as necessary, revise its practices, policies, procedures, and bylaws for the ongoing evaluation of the

services operated or delivered by the facility and for the identification, assessment, and resolution of problems that may develop in the conduct of the facility. These policies, procedures, and bylaws must be in writing, dated, and made available to all members of the governing body and facility staff.

2. The governing body shall appoint a qualified administrator who is responsible for the management of the facility.
 - a. The administrator shall hold a valid North Dakota nursing home administrator's license.
 - b. In the absence of the administrator, an employee must be designated in writing to act on behalf of the administrator.
3. The governing body must ensure sufficient trained and competent staff is employed to meet the residents' needs. The governing body shall approve and ensure implementation of written personnel policies and procedures including:
 - a. Written job descriptions for personnel positions in all service areas. Job descriptions must include definition of title, qualifications, duties, responsibilities, and to whom the position reports.
 - b. Provisions for checking state registries and licensing boards for current licensure or registry status and history of disciplinary actions prior to employment.
 - c. Procedures to ensure all personnel for whom licensure, certification, or registration is required have a valid and current license, certificate, or registration.
 - d. Prohibitions on resident abuse, neglect, and misappropriation of resident property, and procedures for investigation, reporting, and followup action.
4. The governing body shall ensure the development and implementation of written policies and procedures for all services provided by the facility, including emanating services. These policies and procedures must be current and shall be revised when changes in standards of practice occur.
5. The governing body shall ensure the development and implementation of written resident care policies, procedures, and practices including:
 - a. Admission or retention policies which ensure:

- (1) Only those persons whose needs can be met within the accommodations and services provided by the facility are admitted and retained by the facility.
 - (2) Residents are admitted to the facility only by the order of a licensed health care practitioner.
 - (3) Resident information, including current medical findings, diagnosis, and orders from the licensed health care practitioner for immediate care of the resident are available to the facility prior to or at the time of admission.
 - (4) Other pertinent information including family history and past medical history is received from the licensed health care practitioner within forty-eight hours of admission.
 - (5) A physical examination of the resident is performed by the licensed health care practitioner within five days prior to admission or within forty-eight hours after admission, unless the licensed health care practitioner documents the current examination remains accurate.
 - (6) Each resident in the facility is under the supervision of a licensed health care practitioner.
 - (a) Licensed health care practitioners shall visit residents as often as medically indicated, but no less frequently than annually.
 - (b) Orders must be signed by the licensed health care practitioner at the time of each visit.
 - (c) Progress notes must be written or dictated at the time of each visit and signed within a timeframe as determined by the facility, not to exceed thirty days.
- b. A procedure whereby an ongoing evaluation of resident status and need for facility care is conducted and made a part of the resident record.
 - c. Arrangements are made in the form of a written contract for specific resident care services to be provided by outside resources if the specific resident care services required are not available by facility staff. Outside resource shall apprise the appropriate facility staff of recommendations, plans for implementation, and continuing assessment through dated, and signed reports.

- d. Provisions to ensure resident rights are met in compliance with North Dakota Century Code chapter 50-10.2.
 - e. Prohibition of resident abuse, neglect, or misappropriation of resident property.
 - f. Provisions to ensure residents are free from physical restraints imposed or psychoactive drugs administered for the purpose of discipline or convenience that are not required to treat the resident's medical symptoms.
6. The governing body is responsible for services furnished in the facility whether or not they are furnished directly by the facility or by outside resources. The governing body shall ensure that a contractor of services furnishes such services that permit the facility to comply with all applicable laws, codes, rules, and regulations. The governing body shall:
- a. Ensure the services performed under contract are provided in a safe and effective manner.
 - b. Maintain a copy of current contracts for all contracted services. The contracts must identify the scope and nature of the services provided.

History: Effective July 1, 1996.

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

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

33-07-03.2-08. Physical environment. The facility must be constructed, arranged, and maintained to ensure the safety and well-being of the residents.

- 1. The physical plant must comply with the construction standards of chapter 33-07-04.2; and
- 2. The facility must provide an environment that is maintained, clean, comfortable, and appropriately responds to the physical, functional, and psychosocial needs of the residents. The facility must provide adequate space, lighting levels, ventilation, and safety measures consistent with the services being offered and the needs of the residents being served.

History: Effective July 1, 1996.

General Authority: NDCC 23-01-03

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

33-07-03.2-09. Emergency plan. The facility shall have a written procedure to be followed in case of emergencies. The emergency plan must specify persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating residents,

and assignment of specific tasks, and responsibilities to the personnel of each shift.

History: Effective July 1, 1996.

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

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

33-07-03.2-10. Quality improvement program.

1. The facility shall develop and implement a quality improvement program, approved by the governing body, for assessing and improving the quality of services and care provided to residents. The written program must describe objectives, organization, scope, and mechanisms for overseeing and reporting the effectiveness of monitoring, evaluation, and improvement activities.
2. The quality improvement program must include a written plan for all services including indicators of care that are important to the health and safety of the residents.
3. The indicators of the written quality improvement plan must relate to quality of services and care provided to residents and must be objective, measurable, and based on current standards of practice.
4. Written documentation of quality improvement activities, including infection control, must be prepared and reported to the governing body.

History: Effective July 1, 1996.

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

Law Implemented: NDCC 23-16-06

33-07-03.2-11. Infection control program. The facility shall develop and implement a facilitywide program, approved by the governing body, for surveillance, prevention, and control of infections. This program must be consistent with the centers for disease control standards specific to disease control. The responsibilities of the program include:

1. Establishment of an infection control plan that includes the use of techniques and precautions in accordance with the standards of practice for each department or service.
2. Establishment of policies and procedures for reporting, logging, surveillance, monitoring, and documentation of infections, and the development and implementation of systems to collect and analyze data and activities to prevent and control infections.

3. Development and implementation of policies and procedures including:
 - a. The criteria to determine admission eligibility of an individual with a contagious or infectious disease; and
 - b. The immediate isolation of all residents in whom the condition jeopardizes the safety of the resident or other residents.
4. Assignment of the responsibility for management of infection surveillance, prevention, and control to a qualified person or persons.
5. Maintenance of proper facilities and appropriate procedures used for disposal of all infectious and other wastes.
6. Development and implementation of a process for inspection and reporting of any employee with an infection who may be in contact with residents, their food, or laundry.

History: Effective July 1, 1996.

General Authority: NDCC 23-01-03

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

33-07-03.2-12. Education programs. The facility shall design, implement, and document educational programs to orient new employees and keep all staff current on new and expanding programs, techniques, equipment, and concepts of quality care. The following topics must be covered with all staff annually:

1. Safety and emergency procedures, including procedures for fire and other disasters.
2. Prevention and control of infections, including universal precautions.
3. Resident rights.
4. Advanced directives.
5. Care of the emotionally disturbed and confused resident.

History: Effective July 1, 1996.

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

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

33-07-03.2-13. Medical services.

1. The facility shall have a licensed physician who is specified as the medical director or a medical staff organized under

bylaws and rules approved by and responsible to the governing body. The medical director or medical staff shall be responsible for the quality of all medical care provided to residents and for the ethical and professional practices of its members.

2. The duties and responsibilities of the medical director or medical staff must be delineated in a formal agreement with the governing body.
3. The medical director or medical staff shall be involved in the development of written medical staff policies which are approved by the governing body, which delineate the responsibilities of licensed health care practitioners.
4. The medical director or a member of the medical staff shall participate in the quality improvement and infection control program meetings.

History: Effective July 1, 1996.

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

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

33-07-03.2-14. Nursing services.

1. Nursing services must be under the direction of a nurse executive (director of nursing) who is employed by the facility and is a registered nurse licensed to practice in North Dakota.
2. The nurse executive must have written administrative authority, responsibility, and accountability for the integration of nursing services consistent with the overall facility plan and philosophy of resident care. The nurse executive shall retain administrative responsibility to:
 - a. Ensure development, maintenance, implementation, and revision of nursing service objectives, standards of practice, policy and procedure manuals, and written job descriptions for each level of nursing personnel, including unlicensed staff.
 - b. Ensure a resident assessment is completed and a comprehensive care plan is established in coordination with the resident or legal representative within the required timeframes.
 - c. Ensure care plans are implemented so as to assist each resident to attain and maintain their highest level of functioning.

3. The facility shall have sufficient qualified nursing personnel on duty at all times to meet the nursing care needs of the residents including:
 - a. At least one registered nurse on duty eight consecutive hours per day, seven days a week; and
 - b. At least one licensed nurse on duty and designated to work charge twenty-four hours a day seven days a week.

History: Effective July 1, 1996.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 23-01-03

33-07-03.2-15. Resident assessment and care plan.

1. The facility shall complete and maintain an up-to-date comprehensive resident assessment for each resident by using the resident assessment instrument, the utilization guidelines, the minimum data set of core elements and common definitions, and the resident assessment protocol summary with triggers as specified by the department and approved by health care financing administration and published in the state operations manual.
2. In coordination with the resident or resident's legal representative and staff providing resident care services, a comprehensive written resident care plan for each resident must be developed and maintained consistent with each resident's individual needs and licensed health care practitioner's plan of medical care. An initial care plan must be implemented upon admission and revised within seven days after the completion of the resident assessment instrument.
3. A care plan must be individualized to meet the needs of the resident and must include problem and strength identification, measurable resident-centered goals, plans of action, and which professional service is responsible for each element of care. Goals must be measurable, behavior oriented, time-limited, and achievable.
4. Resident assessment and quarterly assessment information on each resident must be submitted electronically to a location specified by the department in a timeframe specified by the department.

History: Effective July 1, 1996.

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

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

33-07-03.2-16. Dietary services. The facility shall provide for the dietary needs of the residents and provide dietary services in conformance with the food service sanitation manual issued by the department. Dietary services must include:

1. A qualified director of dietary services must be designated to be responsible for the dietary service of the facility.
 - a. A director of dietary services is:
 - (1) A dietitian licensed to practice in North Dakota and registered by the American dietetic association;
 - (2) A graduate of a dietetic technician or dietetic assistant training program approved by the American dietetic association;
 - (3) A certified dietary manager, certified by the certifying board for dietary managers;
 - (4) A graduate of a state-approved course that provides ninety or more hours of instruction in dietary service supervision in a health care institution with consultation from a licensed and registered dietitian; or
 - (5) An individual trained and experienced in food service supervision and management in a military service equivalent to the program described in paragraph 2 or 4.
 - b. If the director of dietary services is not a licensed and registered dietitian, regularly scheduled consultation from a consultant licensed and registered dietitian must be obtained at least monthly.
2. Dietary service personnel and all personnel who are actively engaged in assisting residents with eating must be in good health and practice hygienic food handling techniques.
3. Menus for all diets must be planned in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of science. Sufficient food must be prepared as planned for each meal to meet the nutritional needs of residents.
 - a. Menus must be written at least one week in advance. The current week's menus must be located in the dietary services area for easy use by dietary services staff.
 - b. 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 on the menu.

- c. Menus of food served must be filed and maintained for thirty days.
 - d. Menus must be adjusted to address the requests of the residents when possible.
4. Therapeutic diets when prescribed by the licensed health care practitioner.
5. At least three meals or the equivalent must be served daily, at regular times.
 - a. There must be no more than a fourteen-hour span between a substantial evening meal and breakfast unless a nourishing snack is provided at bedtime. Up to sixteen hours may elapse between a substantial evening meal and breakfast the following day if the residents agree to this meal span and a nourishing evening snack is served.
 - b. A substantial evening meal is an offering of three or more menu items at one time, one of which includes a high quality protein item such as meat, fish, egg, or cheese.
 - c. Snacks must be offered at bedtime daily.
6. A current diet manual, approved by the medical staff or medical director, must be readily available.
7. Providing each resident with food prepared by methods that conserve nutritive value, flavor, and appearance. The food must be attractively served at the proper temperatures and in a form to meet individual needs. Equipment must be provided and procedures established to:
 - a. Maintain hot food above one hundred forty degrees Fahrenheit [60 degrees Celsius] during dishing.
 - b. Ensure that cold foods leave the kitchen at no more than forty-five degrees Fahrenheit [7.22 degrees Celsius].
8. Table service for all who can and will eat at a table. For those not eating at a table, the proper eating equipment must be available and used.
9. Facilities for the general dietary needs of the residents, and for the maintenance of sanitary conditions in the storage, preparation, service and distribution of food.

History: Effective July 1, 1996.

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

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

33-07-03.2-17. Resident record services. The governing body of the facility shall establish and implement policies and procedures to ensure the facility has a resident record service with administrative responsibility for resident records.

1. A resident record must be maintained and kept confidential for each resident admitted to the facility. The resident record shall be complete, accurately and legibly documented, and readily accessible.
 - a. The resident or the resident's legal representative have the right to view and authorize release of their medical information.
 - b. The facility shall develop policies which address access to resident records.
 - c. Resident records may be removed from the facility only upon subpoena, court order, or pursuant to facility policies when a copy of the original record is maintained at the facility.
2. All records of discharged residents must be preserved for a period of ten years from date of discharge. Records of deceased residents must be preserved to seven years.
 - a. In the case of minors, records must be retained for the period of minority and ten years from the date of live discharge. Records of deceased residents who are minors must be preserved for the period of minority and seven years.
 - b. It is the governing body's responsibility to determine which records have research, legal, or medical value and to preserve such records beyond the above-identified timeframes until such time the governing body determines the records no longer have a research, legal, or medical value.
3. If the facility does not employ an accredited record technician or registered record administrator, an employee of the facility must be assigned the responsibility for ensuring that records are maintained, completed, and preserved. The designated employee shall receive consultation at least annually from an accredited record technician or registered record administrator.
4. Each resident record must include:
 - a. The name of the resident, personal licensed health care practitioner, dentist, and designated representative or other responsible person, admitting diagnosis, final diagnosis, condition on discharge, and disposition.

- b. Initial medical evaluation including medical history, physical examination, and diagnosis.
 - c. A report from the licensed health care practitioner who attended the resident in the hospital or other health care setting, and a transfer form used under a transfer agreement.
 - d. Licensed health care practitioner's orders, including all medication, treatments, diet, restorative plan, activities, and special medical procedures.
 - e. Licensed health care practitioner's progress notes describing significant changes in the resident's condition, written at the time of each visit.
 - f. Current comprehensive resident assessment and plan of care.
 - g. Quarterly reviews of resident assessments and nurse's notes containing observations made by nursing personnel for the past year.
 - h. Medication and treatment records including all medications, treatments, and special procedures performed.
 - i. Laboratory and x-ray reports.
 - j. Consultation reports.
 - k. Dental reports.
 - l. Social service notes.
 - m. Activity service notes.
 - n. Resident care referral reports.
5. All entries into the resident record must be authenticated by the individual who made the written entry, as defined by facility policy and applicable state laws and regulations, and must at a minimum include the following:
- a. All entries the licensed health care practitioner personally makes in writing must be signed and dated by the licensed health care practitioner.
 - b. Telephone and verbal orders may be used provided they are given only to qualified licensed personnel and reduced to writing and signed or initialed by a licensed health care practitioner responsible for the care of the patient.

- c. Signature stamps may be used consistent with facility policies as long as the signature stamp is used only by the licensed health care practitioner whose signature the signature stamp represents. Written assurance must be on file from the licensed health care practitioner to indicate the practitioner is the sole user of the signature stamp.
- d. Electronic signatures may be used if the facility's medical staff and governing body adopt a policy permitting authentication by electronic signature. The policy must include:
 - (1) The staff within the facility authorized to authenticate entries in resident records using an electronic signature.
 - (2) The safeguards to ensure confidentiality, including:
 - (a) Each user must be assigned a unique identifier generated through a confidential access code.
 - (b) The facility shall certify in writing each identifier is kept strictly confidential. This certification must include a commitment to terminate the user's use of that particular identifier if it is found the identifier has been misused. Misused means the user has allowed another individual to use the user's personally assigned identifier, or the identifier has otherwise been inappropriately used.
 - (c) The user must certify in writing the user is the only individual with user access to the identifier and the only individual authorized to use the signature code.
 - (d) The facility shall monitor the use of the identifiers periodically and take corrective action as needed. The process by which the facility will conduct the monitoring must be described in policy.
 - (3) A process to verify the accuracy of the content of the authenticated entries, including:
 - (a) A system that requires completion of certain designated fields for each type of document before the document may be authenticated, with no blanks, gaps, or obvious contradictory statements appearing within those designated fields. The system must require that correction

or supplementation of previously authenticated entries must be made by additional entries, separately authenticated and made subsequent in time to the original entry.

- (b) An opportunity for the user to verify the accuracy of the document and to ensure the signature has been properly recorded.
 - (c) As part of the quality improvement activities, the facility shall periodically sample records generated by the system to verify accuracy and integrity of the system.
- (4) A user may terminate authorization for use of an electronic signature upon written notice to the staff member in charge of resident records.
 - (5) Each report generated by the user must be separately authenticated.
 - (6) A list of confidential access codes must be maintained under adequate safeguards by facility administration.

History: Effective July 1, 1996.

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

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

33-07-03.2-18. Pharmaceutical services. The facility shall provide pharmaceutical services to meet resident needs.

1. The facility shall obtain the services of a licensed pharmacist who shall develop policies and procedures for the provision of pharmaceutical services within the facility consistent with chapter 61-03-02, state laws, and federal laws. These policies and procedures must be approved by medical staff or medical director and governing body and must include provisions for:
 - a. The procurement, storage, dispensing, labeling, administration, and disposal of drugs and biologicals.
 - b. Allowing the resident to be totally responsible for the resident's own medication based on request of the resident, assessment of the functional capability of the resident by facility nursing staff, documentation of the assessment and resultant recommendations, and specific approval and order of the licensed health care practitioner. The facility must provide a secure storage area for medications self-administered by the resident.

2. The pharmacist shall review each resident's medications monthly and report any discrepancies to the nurse executive or the resident's licensed health care practitioner.
3. All medications administered to a resident must be ordered in writing by a licensed health care practitioner. Telephone and verbal orders may be given to qualified licensed personnel and must be immediately reduced in writing, signed, and dated by the individual receiving the order, and countersigned or initialed by the licensed health care practitioner.
4. When ordered, medications not specifically limited as to time or number of doses must be automatically stopped in accordance with a written policy. The resident's attending licensed health care practitioner must be notified of stop order policies and contacted promptly for a decision concerning renewal of such orders so continuity of the resident's therapeutic regimen is not inadvertently interrupted.
5. Standing orders for drugs must specify the circumstances for drug dosage, route, duration, and frequency of administration. The order must be reviewed annually and, if necessary, renewed. When a standing order is implemented for a specific resident, it must be entered in the resident's record, dated, and signed by the licensed health care practitioner who prescribed the order.
6. All medications must be administered by individuals authorized to do so in accordance with state laws and regulations governing such acts. Each dose administered must be properly recorded in the resident record.
7. All medications administered by facility staff must be stored in a locked area or locked cart.
 - a. Medications requiring refrigeration must be kept in a separate refrigerator which is locked or in a separate refrigerator in a lockable medication room near the nurses' station.
 - b. Medications for "external use only" must be kept in a locked area and separate from other medications.

History: Effective July 1, 1996.

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

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

33-07-03.2-19. Social services. The governing body shall ensure social services are provided to ensure each resident attains and maintains their highest level of physical, mental, and psychosocial functioning.

1. The facility shall have one or more designated staff members trained in the assessment of residents' psychosocial needs and in the provision of services to meet those needs. If a designee is not a qualified social worker as defined in North Dakota Century Code chapter 43-41, the designee shall receive onsite consultation from a qualified social worker on a quarterly basis.
2. If the facility does not provide social services directly, the facility must have a contract with an agency or individual qualified to provide such services.
3. The facility shall have policies and procedures for the delivery of social services.

History: Effective July 1, 1996.

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

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

33-07-03.2-20. Activity services. The facility shall provide an ongoing program of activity services to meet the needs and interests of each resident which promotes or maintains each resident's physical, mental, and psychosocial well-being.

1. The facility shall employ a qualified activity coordinator who is responsible for the direction and supervision of the resident activity services. A qualified activity coordinator is:
 - a. An individual certified as a therapeutic recreation specialist by a recognized accrediting body;
 - b. An individual who is eligible for certification as a therapeutic recreation specialist by a recognized accrediting body for the first year the individual is eligible;
 - c. An individual who is activity director certified by a recognized accrediting body;
 - d. An individual who is activity consultant certified by a recognized accrediting body;
 - e. A qualified occupational therapist as defined in North Dakota Century Code chapter 43-40;
 - f. A certified occupational therapy assistant;
 - g. An individual who has the equivalent of two years of full-time experience in a social or recreational program within the last five years, one of which was in a resident activity program in a health care setting; or

- h. An individual who has completed an activity training program approved by the department as meeting the requirements in section 33-07-03.2-22; and
 - (1) Has one year of full-time experience in the past five years in an activity program in a health care setting; or
 - (2) Receives monthly onsite consultation for a minimum of one year after the completion of the program from an individual meeting the qualifications described in subdivision a, d, e, f, or g.
2. The facility shall have sufficient activity staff to provide an ongoing program of meaningful, stimulating, therapeutic, and leisure time activities to meet the needs and suited to the interests of each resident.
3. The facility shall have policies and procedures for the delivery of activity services.
4. Each resident's activity plan must be developed in accordance with instructions of the licensed health care practitioner.
5. The activity plan must be coordinated with the resident's overall plan of care and altered as needed.
6. Activity notes, including observations of resident's participation in activity programs, must be recorded and retained in the resident's record.
7. Resident's request to see clergy must be honored and space must be provided for privacy during these visits.
8. The facility must have adequate equipment and material to support independent and group activities.

History: Effective July 1, 1996.

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

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

33-07-03.2-21. Approved activity training program. Only programs that the department determines to meet the criteria in this section and approves in writing will be considered to be an approved activity training program.

1. A department-approved activity training program must have a curriculum which contains, at a minimum, one hundred eighty hours, ninety of which are theory and ninety of which are practical training hours.
2. The primary instructor of a program shall have:

- a. A bachelor's degree or be activity consultant certified;
 - b. Have current activity experience as a director or as a practicing consultant; and
 - c. Have experience in teaching adults.
3. Supplemental instructors shall have a minimum of one year of experience in their field.
 4. The theory portion of the program shall include, at a minimum, the topics identified in the basic education course for activity professionals developed by the national association of activity professionals and the national certification council for activity professionals.
 5. Training on nursing and nursing-related services, including transferring, positioning, toileting, and feeding, may not be included in the curriculum of an activity training program.
 6. At the completion of the program, the instructor must verify in writing to the department the successful completion of the program for each participant.
 7. A listing of state-approved activity training programs and the date of approval will be maintained by the department.
 8. An approved activity training program may include only those topics which were submitted to and approved by the department for inclusion. Changes which are made to the program must be approved by the department prior to implementation or the program will no longer be considered to be approved.

History: Effective July 1, 1996.

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

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

33-07-03.2-22. Specialized rehabilitative services. Specialized rehabilitative services shall, at a minimum, include physical therapy, speech and language pathology, occupational therapy, and health services for mental illness and mental retardation and shall:

1. Be provided upon a written order of a licensed health care practitioner, who shall be responsible for the general medical direction of such services as part of the total care of the resident.

2. Be provided directly by facility staff or obtained through contract with outside resources.

History: Effective July 1, 1996.

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

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

33-07-03.2-23. Diagnostic services. The facility shall provide or have arrangements for obtaining diagnostic services consistent with the needs of the resident.

1. If the facility provides any clinical laboratory testing services to residents, regardless of the frequency or the complexity of the testing, the governing body is required to obtain and maintain compliance with the applicable parts of the clinical laboratory improvement amendments of 1988, 42 CFR part 493.
2. If the facility provides radiology or other diagnostic services to residents, these services must be provided in accordance with the current standards of practice and state and federal regulations.

History: Effective July 1, 1996.

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

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

33-07-03.2-24. Housekeeping, maintenance, and laundry services. The facility shall provide housekeeping and maintenance services necessary to maintain a sanitary and comfortable environment and laundry services, including personal laundry services, to meet the needs of the residents.

1. The facility shall employ sufficient housekeeping and maintenance personnel to maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. The facility shall establish, implement, and update policies and procedures consistent with current standards of practice including procedures to ensure:
 - a. The facility is kept free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards;
 - b. Floors are regularly cleaned, polishes on floors provide a nonslip finish, and throw or scatter rugs have a nonslip backing;
 - c. Walls and ceilings are maintained, cleaned, and painted as needed;
 - d. The grounds are kept free from refuse and litter; and

- e. Poisons and chemical compounds must be stored away from resident and food preparation and storage areas.
2. The facility shall be maintained free from insects and rodents.
 - a. Pest control services must be provided by the facility or by contract with a pest control company.
 - b. Windows and doors must be appropriately screened to exclude insects.
 - c. Harborages and entrances for insects and rodents must be eliminated.
3. The facility shall have available at all times a sufficient supply of linen in good condition for the care and comfort of residents and ensure there is sufficient trained staff and facilities available to provide these services in a manner that controls the spread of infection.
 - a. Clean linen and clothing must be stored in clean, dry, dust-free, and easily accessible areas.
 - b. Soiled linen must be sorted and stored in well-ventilated areas, separate from clean laundry spaces, and must not be permitted to accumulate.
 - (1) Soiled linen and clothing must be stored separately in suitable bags or containers.
 - (2) Potentially infectious soiled linen must be handled with particular attention to avoid contamination of clean linen.
 - (3) Soiled linen may not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, kitchens, or food storage areas.

History: Effective July 1, 1996.

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

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

33-07-03.2-25. Adult day care services.

1. Any facility seeking to develop an adult day care service shall contact the department and receive advance approval as a condition of licensure.
2. A facility may use existing space and equipment to deliver adult day care services provided services to the residents of

the facility are not diminished and their needs are being acceptably addressed with the following exceptions:

- a. The facility shall provide dining space for congregate dining of adult day care participants in addition to space required under section 33-07-04.2-06.
 - b. The facility shall provide activity space in addition to space required under section 33-07-04.2-06.
 - c. The facility shall provide an area allowing privacy for adult day care participants to allow for rest periods.
3. A facility accepting persons for adult day care shall develop policies and procedures covering all aspects of adult day care including:
- a. Medications and treatments shall be provided by facility staff only by order of a licensed health care practitioner, and records must be maintained of services provided to individual adult day care participants.
 - b. Individuals having a communicable disease shall not participate in the adult day care program.

History: Effective July 1, 1996.

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

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

33-07-03.2-26. Secured units. Secured units, such as those designed for residents with Alzheimer's disease or other dementias, must comply with the following:

1. Prior to admission or within seven days of admission, a multidisciplinary team shall evaluate the appropriateness of a resident's placement in a secured unit. The multidisciplinary team shall, at a minimum, consist of a registered nurse and a licensed social worker who will be providing service to the resident in the secured unit, the resident's licensed health care practitioner, and the resident or the individual who has legal status to act on behalf of the resident;
2. Licensed health care practitioner orders for placement in a secured unit must be documented in the resident's record and must be reviewed during the licensed health care practitioner's regular visits;
3. Placement in a secured unit may not be used as a punishment or for the convenience of the staff; and
4. A resident in a secured unit shall have access to the same services as other residents in the facility including

provisions for routine and ongoing access to the outdoors as appropriate based on the resident's past history, personal preferences, and current condition.

History: Effective July 1, 1996.

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**

[Repealed effective July 1, 1996]

STAFF COMMENT: Chapter 33-07-04.2 contains all new material and is not underscored so as to improve readability.

**CHAPTER 33-07-04.2
GENERAL STANDARDS OF CONSTRUCTION AND
EQUIPMENT FOR NURSING FACILITIES**

Section	
33-07-04.2-01	Definitions
33-07-04.2-02	Conflict With Federal Requirements
33-07-04.2-03	Waiver Provision
33-07-04.2-04	Access and Surveillance by the Department
33-07-04.2-05	Plans of Correction
33-07-04.2-06	Site
33-07-04.2-07	Emanating Services
33-07-04.2-08	Plans and Specifications
33-07-04.2-09	Codes and Standards
33-07-04.2-10	Nursing Unit
33-07-04.2-11	Dining and Activity Areas
33-07-04.2-12	Rehabilitation Therapy
33-07-04.2-13	Dietary Services
33-07-04.2-14	General Storage
33-07-04.2-15	Details
33-07-04.2-16	Elevators
33-07-04.2-17	Mechanical Requirements
33-07-04.2-18	Electrical Requirements

33-07-04.2-01. Definitions. The definitions located in section 33-07-03.2-01 apply to this chapter.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.2-02. Conflict with federal requirements. The provisions located in section 33-07-03.2-02 apply to this chapter.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.2-03. Waiver provision. The waiver provision located in section 33-07-03.2-04 applies to this chapter.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.2-04. Access and surveillance by the department. The provisions located in section 33-07-03.2-05 apply to this chapter.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.2-05. Plans of correction. The provisions located in section 33-07-03.2-06 apply to this chapter.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.2-06. Site. For new construction, the site of the facility must be away from nuisances detrimental to the proposed services, 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.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.2-07. Emanating services.

1. Sufficient information on the design of other types of facilities physically attached to the nursing facility must be submitted to the department so as to determine that safety from fire and the adequacy of the spaces and services of the facility are not compromised.
2. Occupants of other types of facilities may use service spaces such as dining and activities in the facility only when the size of such spaces exceed the standards of this chapter.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-01-03, 23-16-06

33-07-04.2-08. Plans and specifications.

1. A facility shall contact the department prior to any substantial changes in or alterations to any portion of the structure to determine to what extent it is subject to review. A substantial change includes alterations affecting the fire safety or structural integrity of the building, changes in service areas or services provided within a service area, changes in bed capacity, or any other change governed by the standards of this chapter. The department may request plans, specifications, or other information as may be required and shall make the final determination on those areas subject to review.
2. A facility shall submit plans and specifications to the department for all construction, remodeling, and installations subject to review. The plans and specifications must be prepared by an architect or engineer licensed in North Dakota, unless otherwise determined by the department.
3. Start of construction prior to approval by the department of the final plans and specifications is not permitted.
4. All construction, remodeling, and installations must be in accordance with the final plans and specifications approved by the department. Modifications or deviations from the approved plans and specifications must be submitted to and approved by the department.
5. The department may make inspections of construction, remodeling, or installations and arrange conferences with the facility to ensure conformance with approved plans and specifications.
6. The construction specifications must require the contractor to perform tests to ensure all systems conform to the approved plans and specifications.
7. Routine maintenance does not require the submission of plans and specifications. For the purpose of this subsection, "routine maintenance" means repair or replacement of existing equipment, room finishes and furnishings, and similar activities.

History: Effective July 1, 1996.

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

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

33-07-04.2-09. Codes and standards.

1. A facility must be designed, constructed, equipped, maintained, and operated in compliance with:
 - a. This chapter;

- b. The guidelines for construction and equipment of hospital and medical facilities, 1992-93 edition, compiled by the American institute of architects committee on architecture for health with the exception of the section related to design temperatures;
 - c. The national fire protection association 101 life safety code, 1985 edition;
 - d. North Dakota Century Code section 54-21.3-04.1, relating to accessibility for disabled persons;
 - e. The food service sanitation manual issued by the department;
 - f. Article 62-03 relating to plumbing standards;
 - g. Article 24-02 relating to electrical wiring standards;
 - h. Article 45-12 relating to boiler rules and regulations;
 - i. Article 33-15 governing air pollution control, relating to incinerators; and
 - j. Article 33-10 relating to radiological health.
2. A facility must comply with all applicable building codes, ordinances, and rules of city, county, or state jurisdictions.
 3. These standards are established to bring about a desired performance result. If specific limits are prescribed, equivalent solutions may be acceptable if approved in writing by the department as meeting the intent of these standards.

History: Effective July 1, 1996.

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

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

33-07-04.2-10. Nursing unit.

1. A resident room must have adequate space to house necessary furniture and equipment, to provide for resident care, to provide for movement of beds, and for the transfer of residents to and from beds.
2. The smallest dimension of a rectangular single resident room may not be less than ten feet [3.05 meters] free of fixed obstructions and the floor area may not be less than one hundred twenty square feet [11.15 square meters].
3. The smallest dimension of a rectangular multiple resident room may not be less than eleven feet six inches [3.51 meters] free

of fixed obstructions, except in specially arranged rectangular rooms such as toe-to-toe arrangements where the minimum clear width may not be less than ten feet [3.05 meters] free of fixed obstructions.

4. In other than a rectangular-shaped room, the principles of space allocation specified by the minimum dimensions and floor area requirements in a rectangular-shaped room must be adhered to.
5. Each resident room must have an outside wall with natural light provided by a window. The area of the glazing material in the window may not be less than one-tenth of the floor area of the resident room.
6. In existing construction, a multiple resident room may not permit more than two beds side by side parallel to the window wall.
7. In new construction, a multiple resident room must be designed to permit no more than two beds.
8. A janitor's closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for each nursing unit.
9. A visiting room shall be provided where residents may visit privately.
10. Resident toilet rooms must be functionally accessible and usable by the residents which they serve. In new construction, a resident toilet room must provide space for two staff members to assist a resident as needed.

History: Effective July 1, 1996.

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

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

33-07-04.2-11. Dining and activity areas. The dining areas and activities areas may not be the same space.

1. The total area set aside for dining must be a minimum of twenty square feet [1.86 square meters] per bed.
2. The total area set aside for activities must be a minimum of fifteen square feet [1.40 square meters] per bed. Adequate storage space must be provided for recreational equipment and supplies in addition to the space required.
3. A dayroom must be provided in each nursing unit in addition to the required activity space.

4. A functionally accessible toilet room must be provided convenient to activity and dining areas.

History: Effective July 1, 1996.

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

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

33-07-04.2-12. Rehabilitation therapy. Exercise and treatment areas of at least three hundred square feet [27.87 square meters] must be provided for physical therapy, occupational therapy, or restorative nursing services.

History: Effective July 1, 1996.

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

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

33-07-04.2-13. Dietary services. Dietary areas and equipment must be designed to accommodate the requirements for sanitary storage, processing, and handling consistent with the food service sanitation manual issued by the department.

History: Effective July 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-07-04.2-14. General storage.

1. Resident space may not be used for general facility storage.
2. Separate storage space with provisions for locking and security control must be provided for residents' personal effects.

History: Effective July 1, 1996.

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

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

33-07-04.2-15. Details. All details must meet the following requirements:

1. Soap in a soap dispenser must be provided at all lavatories and sinks used by personnel for handwashing.
2. In new construction, boiler rooms must not be located under any portion of the facility.
3. Ceilings must be acoustically treated in corridors in resident areas, nurses stations, and dining and activity areas.

4. 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 resident room	45	45	51
Public space to resident room ***	50	50	51+
Service areas to resident 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, duct work, and other mechanical items, and blocking and sealing of partitions at floors and ceilings must not compromise the sound isolation required.

History: Effective July 1, 1996.

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

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

33-07-04.2-16. Elevators.

1. An appropriate number of elevators, at least one which complies with the provisions of ANSI A17.1, must be provided in all multistory buildings. All new hospital-type elevators must comply with this standard.
2. All elevators, except freight elevators, must be equipped with a two-way special service switch to permit the car to bypass all landing button calls and be dispatched directly to any floor.

History: Effective July 1, 1996.

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

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

33-07-04.2-17. Mechanical requirements.

1. **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.
2. **Air-conditioning, heating, and ventilation systems.**
 - a. Air-conditioning is optional.
 - b. A temperature range of seventy-one to eighty-one degrees Fahrenheit [39.4 to 45.0 degrees Celsius] must be maintained for all occupied areas.
 - c. All air supply and air exhaust systems must be mechanically operated. Gravity exhaust may be used in nonresident areas and in areas not normally occupied by staff.
 - d. A ceiling exhaust fan may be used to ventilate a single isolated toilet room when a central exhaust system is not readily available.
 - e. Boiler rooms must be provided with sufficient air to maintain equipment combustion rates and to limit room temperatures.
 - f. 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 inaccessible.
 - g. Filters for a central ventilation system must be located upstream of air-conditioning equipment. If a prefilter is

employed, the prefilter must be upstream of the equipment and the final filter may be located downstream.

- h. A manometer must be installed across each filter serving a central ventilation system.
- i. An exhaust hood in a dietary area 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 as the open area from the exposed perimeter of the hood to the average perimeter of the cooking surfaces.

3. Plumbing and other piping systems.

- a. Systems must be designed to supply water to the fixtures and equipment located on upper floors at a minimum pressure of fifteen pounds per square inch [6.80 kilograms per 6.45 square centimeters] during maximum demand periods.
- b. All handwashing facilities in resident care areas shall have the water supply spout mounted so its discharge point is a minimum distance of five inches [12.7 centimeters] above the rim of fixtures.
- c. Flush valves installed on plumbing fixtures must be a quiet operating type, equipped with silencers.
- d. Bedpan flushing devices must be provided in not less than half of the resident toilet rooms and in the soiled workroom. In new construction, rough-in plumbing for bedpan flushing devices in the remaining resident toilet rooms is required.

History: Effective July 1, 1996.

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

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

33-07-04.2-18. Electrical requirements.

- 1. All materials must be listed as complying with applicable standards of underwriters' laboratories incorporated, or other similarly established standards.
- 2. 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.

3. Lighting and appliance panels must be provided for the circuits on each floor. This requirement does not apply to emergency system circuits.
4. Two duplex receptacles are required between adjacent beds.
5. A nurse calling station must be installed at each resident bed, toilet, bath, and shower. The nurse calling station at the toilet, bath, or shower must be an emergency call.
 - a. 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, and soiled workroom.
 - b. If installed, a nurse calling system providing two-way voice communication must be equipped with an indicating light at each calling station that lights and remains lighted as long as the voice circuit is operative.
6. Emergency electric service must be provided to circuits as follows:
 - a. Lighting at the switch-gear location and boiler room.
 - b. Nurse calling system.
 - c. Refrigerators for dietary and medication needs.
 - d. Fire pump, if installed.
 - e. All required duplex receptacles in resident corridors.
 - f. 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.
 - g. Equipment necessary for maintaining electrical service.
 - h. A minimum of one duplex receptacle convenient to the bed location for each resident requiring the use of life support systems.

History: Effective July 1, 1996.

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

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

TITLE 43
Industrial Commission

JULY 1996

CHAPTER 43-02-03

43-02-03-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units and fractional proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet [meters] of natural gas authorized to be produced from the respective proration units and fractional proration units in an allocated pool.
4. "Back allowable" means the authorized accumulative underage or shortage for a given proration unit or fractional proration unit.
5. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [~~14.44~~ 15.56 degrees Celsius] and atmospheric pressure at sea level.
6. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.

7. "Bottom hole or subsurface pressure" means the pressure in pounds [kilograms] per square inch [square centimeters] gauge under conditions existing at or near the producing horizon.
8. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
9. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [~~14.44~~ 15.56 degrees Celsius].
16. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy

extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of (a) aiding in the lifting of fluids in the well, or (b) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
19. "Fractional proration unit for oil" means a tract of land containing more or less than forty acres [16.19 hectares] predominantly situated within the confines of a pool.
20. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
21. "Gas-oil ratio" means the ratio of the gas produced in cubic feet [cubic meters] to a barrel of oil concurrently produced during any stated period.
22. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
23. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
24. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
25. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
26. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
27. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.

28. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
29. "Marginal unit" means a proration unit or fractional proration unit that cannot produce at a rate equal to the top unit allowable for the proration period for the pool.
30. "Minimum allowable" means the minimum amount of production from an oil or gas well which will encourage the continued operation of such well and below which the well might be threatened with premature plugging and resulting waste.
31. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
32. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
33. "Nonmarginal unit" means a proration unit or a fractional proration unit that can produce at a rate equal to the top unit allowable for the proration period for the pool.
34. "Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1,524 meters] or above.
35. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
36. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
37. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
38. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.

39. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
40. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
41. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
42. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
43. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
44. "Proration period" means for oil the proration month and for gas six consecutive calendar months which shall begin at seven a.m. on the first day of a calendar month and end at seven a.m. on the first day of the seventh succeeding month.
45. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
46. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
47. "Proration unit for oil" consists of a tract of land containing forty acres [16.19 hectares] predominantly situated within the confines of a pool.
48. "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
49. "Reservoir" means pool or common source of supply.
50. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.

51. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in. Not to be confused with bottom hole pressure.
52. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
53. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry.
54. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsaleable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
55. "Top unit allowable for gas" means the maximum number of cubic feet [cubic meters] of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.
56. "Top unit allowable for oil" means the maximum number of barrels of oil daily for each calendar month allocated to a proration unit for oil in a pool to nonmarginal units.
57. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oils marketable.
58. "Underage" means the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce in an amount equal to that authorized on the proration schedule.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14.1. Verification of certified welders.

1. ~~For the purposes of this section, "wellhead" means any equipment attached to the top of the tubular goods used in a well to support the tubular strings, provide seals between strings, and control production from the well.~~

2. Any welding on a wellhead must be done by a certified welder verified in accordance with this section.
3. Any certified welder requesting verification of the welder's certification shall submit sufficient documentation to the director to verify test results and testing procedures for a welder qualification test. All test welds must be prepared, welded, and tested in accordance with the requirements of section IX of the American society of mechanical engineers (ASME) code or American petroleum institute 1104 code. Tests on the welded specimen must be made by a certified testing laboratory. Any company qualification test procedure conforming to these codes can be used. Position six-G from section IX of the American society of mechanical engineers code must be used on all tests.
4. Upon verification by the director, the welder will be furnished a form to be presented to any operator requesting work. The form will contain the welder's name, address, verification number, and expiration date. The verification will expire thirty-six months from the date of issuance. Thereafter, the welder must be recertified and the process for verification repeated pursuant to this section.
5. It is the responsibility of the operator and owner of the wellhead to ensure that any welding done on the wellhead is done by a welder whose certification is verified in accordance with this section. The operator must promptly submit to the director a form 4 sundry notice of any welding done on any wellhead, listing the welder's name and verification number and giving a brief description of the work. Repealed effective July 1, 1996.

History: Effective May 1, 1990; amended effective May 1, 1992; May 1, 1994.

General Authority: NDGG-38-08-04

Law Implemented: NDGG-38-08-22

43-02-03-14.2. Oil and gas metering systems.

1. **Application of section.** This section is applicable to all metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.
2. **Definitions.** As used in this section:
 - a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is

commingled with production from one or more other wells prior to the custody transfer point.

- b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.
 - c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.
 - d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.
 - e. "Meter factor" means a number obtained by dividing the actual net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.
 - f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.
3. **Inventory filing requirements.** Within sixty days of adoption of these rules, the owner of metering equipment shall file with the commission an inventory of all meters used for custody transfer and allocation of production from oil or gas wells, or both. Inventories must be updated on an annual basis, and filed with the commission on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:
- a. Well name and legal description of location or meter location if different.
 - b. North Dakota industrial commission well file number.
 - c. Meter information:
 - (1) Gas meters:
 - (a) Make and model.
 - (b) Differential, static, and temperature range.
 - (c) Orifice tube size (diameter).
 - (d) Meter station number.
 - (2) Oil meters:

- (a) Make and model.
- (b) Size.
- (c) Meter number.

4. **Installation and removal of meters.** The commission must be notified of all custody transfer meters placed in service. The owner of the custody transfer equipment shall notify the commission of the date a meter is placed in service, the make and model of the meter, and the meter or station number. The commission must also be notified of all metering installations removed from service. The notice must include the date the meter is removed from service, and the meter or station number. The required notices must be filed with the commission within thirty days of the installation or removal of a meter.

All allocation meters must be approved prior to installation and use. The application for approval must include the make and model number of the meter, the meter or station number, the well name, its location, and the date the meter will be placed in service.

Meter installations for measuring production from oil or gas wells, or both, must be constructed to American petroleum institute (API) or American gas association (AGA) standards or to meter manufacturer's recommended installation. Meter installations constructed in accordance with American petroleum institute or American gas association standards in effect at the time of installation shall not automatically be required to retrofit if standards are revised. The commission will review any revised standards, and when deemed necessary will amend the requirements accordingly.

5. **Registration of persons proving or testing meters.** All persons engaged in meter proving or testing of oil and gas meters must be registered with the commission. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However, such persons must notify the commission prior to commencement of the test to allow a representative of the commission to witness the testing process. A report of the results of such test shall be filed with the commission within thirty days after the test is completed. Registration must include the following:
- a. Name and address of company.
 - b. Name and address of measurement personnel.
 - c. Qualifications, listing experience, or specific training.

Any meter tests performed by a person not registered with the commission will not be accepted as a valid test. ~~Registration must be within sixty days of the adoption of these rules or within thirty days of employment of test personnel.~~

6. **Calibration requirements.** Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the commission at least ten days prior to the testing of any meter.
- a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests and is greater than two percent, the meter must be repaired or adjusted and tested within forty-eight hours of repair or replaced.
 - b. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the commission to ensure measurement accuracy.
 - c. All gas meters must be tested with a minimum of a three point test for static and differential pressure elements and a two points point test for temperature element-test elements. The test reports must include an as-found and as-left test and a detailed report of changes.
 - d. Test reports must include the following:
 - (1) Producer name.
 - (2) Lease name.
 - (3) Pipeline company or company name of test contractor.
 - (4) Test personnel's name.
 - (5) Station or meter number.
 - e. ~~Minimum~~ Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:
 - (1) Oil meters used for custody transfer, monthly shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at each two thousand barrel interval or more frequently at the discretion of the operator.

- (2) ~~Oil--meters-used-for-custody-transfer-of-nine-hundred barrels-or-less-per-month,-quarterly.~~
 - {3} ~~Oil~~ Quarterly for oil meters used for allocation of production; ~~quarterly.~~
 - {4} ~~Gas~~ Semiannually for gas meters used for allocation of production; ~~quarterly.~~
 - {5} (4) Gas Semiannually for gas meters in gas gathering; semiannual systems.
 - {6} (5) ~~Orifice-meter-primary-element,-five-years~~ For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.
 - {7} (6) ~~Orifice~~ Semiannually for orifice plates; ~~semiannual and annually for any meter measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis.~~
- f. Meter test reports must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas and all meters used in crude oil custody transfer.
- g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:
- (1) ~~All~~ Annually for all equipment used to test the pressure and differential pressure elements; ~~annually.~~
 - (2) ~~All~~ Annually for all equipment used to determine temperature; ~~annually.~~
 - (3) ~~All~~ Biennially for all conventional pipe provers; ~~biennially.~~
 - (4) ~~All~~ Annually for all master meters; ~~annually.~~
 - (5) ~~Equipment~~ Five years for equipment used in orifice tube inspection; ~~five-years.~~

7. **Variations.** Variations from all or part of this section may be granted by the commission on the basis of economic necessity providing the variance does not affect measurement accuracy. All requests for variations must be in writing and receive written approval.

A register of variations requested and approved must be maintained by the commission.

History: Effective May 1, 1994; amended effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-15. Bond. Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond in a form approved by the commission, conditioned as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided by law. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars. A blanket bond covering all wells, which a person may at any time drill or operate within the state before the bond is released, shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to ten dry holes, and abandoned wells pursuant to section 43-02-03-55 that have not been properly plugged and the sites reclaimed. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. With regard to cash bonds, the commission may require higher amounts than those referred to in this section. Such additional amounts for cash bonds must be related to the expected cost of plugging and well site reclamation, as determined by the commission.

The bond herein required shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site, and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall either satisfy the conditions or forfeit to the commission the face value of the bond.

Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal

desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal should proceed as follows:

The principal must notify the director, in writing, of all proposed transfers of well at least thirty days before the closing date of the transfer. The director may, for good cause, waive the requirement of at least thirty days' notice prior to transfer.

The principal shall ~~notify~~ submit to the commission on a form to be provided by the commission (form 15) reciting that a certain well, or wells, describing each well by its location within the section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized so to sign.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized so to sign, and the transferee's surety.

When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released upon written notice by the commission to that effect upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor.

The transferee (new operator) of any oil, gas, or injection well; ~~the new operator of any such well~~; shall be responsible for the plugging of any such well and for that purpose shall submit a new bond or, in the case of surety bond, produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter. The original or prior bond shall not be released as to the plugging responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.

Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its

approval, of a surety, or cash bond conditioned as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security.

The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

The director is vested with the power to act for the commission as to all matters within this section.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-18. Drilling units - Well locations. In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a true vertical depth of ~~ten~~ nine thousand feet [~~3048~~ 2743.2 meters] or less shall be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot, nor closer than one thousand feet [304.8 meters] to the nearest well permitted to or capable of producing from the same pool. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by order of the commission.

b. Vertical or directional oil wells projected to a true vertical depth greater than ~~ten~~ nine thousand feet [~~3048~~ 2743.2 meters] shall be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or

equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

2. a. Horizontal wells projected to a true vertical depth of nine thousand feet [2743 2743.2 meters] or less, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.4 meters], must be drilled upon a tract described as two adjacent governmental quarter-quarter sections within the same quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.
- b. Horizontal wells projected to a true vertical depth of more than nine thousand feet [2743 2743.2 meters], with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], must be drilled upon a tract described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than six hundred sixty feet [~~201.17~~ 201.2 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.
3. No well shall be drilled for gas on a tract of land consisting of ~~less than one hundred sixty surface contiguous acres [64.75 hectares] and which is not substantially in the form of a square, in accordance with legal subdivisions of the United States public land surveys or on~~ a governmental quarter section containing less than one hundred forty-five acres [58.68 hectares], and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than one thousand five hundred feet [457.2 meters] to the nearest well drilling to or capable of producing from the same pool. Provided, that in presently producing gas pools accessible to established gas transportation facilities and not controlled by orders heretofore or hereafter made, no well shall be drilled for gas on a tract consisting of less than one hundred sixty surface contiguous acres [64.75 hectares], and which is not substantially in the form of a square, in accordance with the legal subdivisions of the United States public land surveys or a square equivalent to a tract of one hundred sixty acres [64.75 hectares], and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than one thousand five hundred feet [457.2 meters] to a well drilling to or capable of producing from the same pool.

4. Within thirty days, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order, no permits shall be issued for the drilling of an offset well to the discovery well, unless approved by the director. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

5. If the director denies an application for permit, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-18.1. Exception location. If upon application for an exception location, the commission finds that a well drilled at the location prescribed by any applicable rule or order of the commission would not produce in paying quantities, that surface conditions would substantially add to the burden or hazard of such well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery from oil and gas, the commission may enter an order, after notice and hearing, permitting the well to be drilled at a location other than that prescribed and shall

include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. The application for an exception well location shall set forth the names of the lessees of adjoining properties and the names of any unleased mineral owners of the adjoining properties. The application shall be accompanied by a plat or sketch accurately showing the property for which the exception well location is sought, the location of the proposed well, and all other completed and drilling wells on this property and on the adjoining properties. The applicant or its attorney shall certify that a copy of the application has been sent by certified or registered mail to all lessees and all unleased mineral owners of properties adjoining the tract which would be affected by the exception location. If the applicant is the lessee of adjoining tracts that would be affected by the exception, the applicant must give notice, as prescribed above, to its lessors of such tracts.

History: Effective January 1, 1983; amended effective May 1, 1990; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-21. Casing and tubing requirements. All wells drilled for oil and natural gas shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect the water-bearing, oil-bearing, or natural gas-bearing strata.

Sufficient cement shall be used on surface casing to fill the annular space ~~in-back-of~~ behind the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other methods approved by the director.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of seventy degrees Fahrenheit [21.11 degrees Celsius].

Production or intermediate casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths

on production or intermediate casing cement shall be calculated at a temperature of one hundred degrees Fahrenheit [37.78 degrees Celsius].

All flowing wells must be equipped with tubing and a tubing packer. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, leaks, spills, or blowouts.

All persons controlling or operating any well, pipeline, receiving tank, or storage tank, or production facility into which oil, gas, or water is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported, shall verbally notify the director within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains on site of a facility. The verbal notification must be followed within ten days by a written report of the incident, if deemed necessary by the director. Such report must include, ~~but not be limited to,~~ the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be included on such report. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall also notify the surface owners or surface tenants upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports. Within thirty days after the plugging of a well, a plugging record (form 7) shall be filed with the director. Within thirty days after the completion of a well, or recompletion of a well in a different pool, a completion report (form 6) shall be filed with the director, except a completion report shall be filed immediately after the completion or

recompletion of a well in a pool or reservoir not then covered by an order of the commission. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The obligation to log may be waived by the director or other representative if hole conditions preclude the feasibility of such logging operation or if the well is a replacement well. The operator shall cause to be run a log from which the presence of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. Within thirty days after completion, two copies of all logs and surveys run shall be submitted to the director free of charge. However, if the director finds that the directional survey of a well is needed for the timely conduct of business, the director may require the filing of the survey immediately after completion. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, porosity, permeability or fluid saturations, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period must commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period will commence on the date the well is spudded.

Approval must be obtained from the director prior to perforating or recompleting a well in a reservoir other than the reservoir in which the well was originally completed.

Upon the completion, recompletion of a well, the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the initial installation of pumping equipment, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed shall also be included.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-39.1. Oil production limitation. In the event the commission has not established spacing and special field rules for a particular oil pool, oil production from any well completed therein shall be a maximum of two thousand barrels per day until the commission issues a decision after hearing. The director shall have the authority to waive production limitations for good cause, and for special tests.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-44. Metered casinghead gas. All casinghead gas produced shall be reported monthly to the director in units of one thousand cubic feet [28.32 cubic meters] {MGF} computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute {PSIA} [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [~~14.44~~ 15.56 degrees Celsius]. Associated gas production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association {AGA} standards. The operator of a well shall notify the director of the connection date to a gas gathering system, the metering equipment, transporter, and purchaser of the gas. Any gas produced and used on lease for fuel purposes or flared, must be estimated and reported in accordance with section 43-02-03-52.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48. Measurement of oil. Oil production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated meter measurements or tank measurements. All meter and tank measurements, and volume determinations must conform to American

petroleum institute (API) standards and be corrected to a base temperature of sixty degrees Fahrenheit [~~14.44~~ 15.56 degrees Celsius].

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-59. Production from gas wells to be measured and reported. Gas production may not be transported from a gas well premises until its volume has been determined through the use of property calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association (AGA) standards and corrected to a pressure of fourteen and seventy-three hundredths pounds per square inch absolute (psia) [1034.19 grams per square centimeters] at a base temperature of sixty degrees Fahrenheit [~~14.44~~ 15.56 degrees Celsius]. Gas production reports shall be filed with the director on or before the fifth day of the second month succeeding that in which production occurs.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-65. Authorization for production, purchase, and transportation. When necessary the commission shall hold a hearing to set the normal unit allowable for the state.

The commission shall consider all evidence of market demand for oil and gas, including sworn statements of individual demand as submitted by each purchaser or buyer in the state, and determine the amount to be produced from all pools. The amount so determined will be allocated among the various pools in accordance with existing regulations and in each pool in accordance with regulations governing each pool. In allocated pools, effective the first day of each proration period, the commission will issue a proration schedule which will authorize the production of oil and gas from the various units in strict accordance with the schedule, and the purchase and transportation of such production. Allowable for wells completed after the first day of the proration period will become effective from the date of well completion. A supplementary order will be issued by the commission to the operator of a newly completed or recompleted well, and to the purchaser or transporter of the production from a newly completed or recompleted well, establishing the effective date of completion, the amount of production permitted during the remainder of the proration period, and the authority to purchase and transport same from said proration units and fractional proration units.

When it appears that a single normal unit allowable will not supply the amounts of oil or gas required by the markets available, the

commission may designate separate marketing districts within the state and prescribe separate normal unit allowables for each district.

A marginal unit shall be permitted to produce any amount of oil which it is capable of producing up to and including the top unit allowable for that particular pool for the particular proration period; provided the operator of such unit shall file with the commission for a supplemental order covering the difference between the amount shown on the proration schedule and the top unit allowable for the pool. The commission shall issue such supplemental order setting forth the daily amount of production which such unit shall be permitted to produce for the particular proration period and shall furnish such supplemental order to the operator of the unit and a copy thereof to the transporter authorized to transport the production from the unit.

Underages may be made up or unavoidable and lawful overages compensated for during the third proration period next following the proration period in which such underages or overages occurred.

All back allowables authorized for purchase will be published in a proration schedule. No back allowable, except as provided in section 43-02-03-64, shall be placed on the proration schedule unless requested by the producer. In requesting back allowables, the producer shall indicate the reason for the underage and the director may approve any portion of the request. The usual grounds for back allowable which may be considered are (1) failure of purchaser to transport assigned allowable, (2) mechanical failure or repairs to well equipment during the proration period, and (3) testing or gathering engineering data.

In order to preclude premature plugging, a common purchaser within its purchasing area is authorized and directed to make one hundred percent purchases from units of settled production producing ten barrels or less daily of oil, or sixty thousand cubic feet [~~1,699.0~~ 169.9 cubic meters] or less daily of gas, in lieu of ratable purchases or takings. Provided such purchaser's takings are curtailed below ten barrels per unit of oil daily, or below sixty thousand cubic feet [~~1,699.0~~ 169.9 cubic meters] per unit of gas daily, then such purchaser is authorized and directed to purchase equally from all such units within its purchasing area regardless of their producing ability insofar as they are capable of producing.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-80. Reports of purchasers and transporters of crude oil. On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed and purchased by them from each lease

well or central production facility during the reported month. The transporter shall report the disposition of such crude oil on form 10b. All meter and tank measurements, and volume determinations of crude oil removed and purchased from a lease well or central production facility must conform to American petroleum institute (API) standards and corrected to a base temperature of sixty degrees Fahrenheit [14.44 15.56 degrees Celsius].

Prior to removing any oil from a lease well or central production facility, purchasers and transporters shall obtain an approved copy of a producer's certificate of compliance and authorization to purchase and transport oil from lease a well or central production facility (form 8) from either the producer or the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from lease a well or central production facility. Before any crude oil is transported from a lease well or central production facility, the operator of the lease well or central production facility shall file with the director, and obtain the director's approval, a producer's certificate of compliance and authorization to transport oil from lease a well or central production facility (form 8).

Oil transported from a lease well or central production facility before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The director shall revoke the producers certificate of compliance and authorization to transport oil from lease a well or central production facility for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81.1. Reports of purchases for resale and transporting of dry gas. Transporters of and purchasers for the resale of dry gas shall file a report (form 8a) with the director showing the amount of gas taken from each plant or well during the monthly reporting period.

All gas shall be reported monthly to the director in one thousand cubic feet [28.32 cubic meters] (MGF) computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1034.19 grams per

square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [~~14-44~~ 15.56 degrees Celsius].

History: Effective January 1, 1983; amended effective May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-90. Hearings - Complaint proceedings - Emergency proceedings - Other proceedings.

1. Except as more specifically provided in North Dakota Century Code section 38-08-11, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-05 apply to contested case proceedings involving a complaint and a specific-named respondent.
2. For noncontested case proceedings or proceedings that do not involve a complaint and a specific-named respondent the commission shall give at least ~~twenty~~ fifteen days' notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law.
3. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule or order permitted by this section shall remain in force no longer than forty days from its effective date, and in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit twenty-five dollars to the commission to pay the cost of republication of notice of the hearing.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 28-32-05, 38-08-11

**CHAPTER 43-02-04
NATURAL GAS WELL STATUS DETERMINATIONS**

[Repealed effective July 1, 1996]

CHAPTER 43-02-05

43-02-05-01.1. Application of rules for underground injection wells. All underground injection wells are also subject to the provisions of chapter 43-02-03 where applicable.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the industrial commission after notice and hearing. An application for a permit for underground injection shall be submitted to the commission at least thirty days prior to the hearing. The application shall be on forms a form 14 provided by the commission and shall include at least the following information:
 - a. The name and address of the operator of the injection well.
 - b. ~~A--map--showing--the--injection-well-for-which-a-permit-is sought-and-the-applicable-area-of-review.--Within-the-area of--review,--the--map-should-show-the-number,-or-name,-and location-of-all-producing-wells,-injection-wells,-plugged wells,--dry--holes,--and-water-wells.--The-map-should-also show-faults,-if--known--or--suspected.~~ The surface and bottom hole location.
 - c. ~~A--tabulation-of-data-on-all-wells-of-public-record-within the-area-of-review-which-penetrate-the-proposed--injection zone,---Such--data--should--include--a-description-of-each well's-type,-construction,-date-drilled,-location,-depth, record--of--plugging--or--completion,--and--any-additional information--the--commission--may--require.~~ Appropriate geological data on the injection zone and the confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
 - d. ~~Average--and-maximum-daily-rate-and-volume-of-fluids-to-be injected.~~ The estimated fracture pressure of the top confining zone.
 - e. ~~Average--and--maximum--injection--pressure.~~ Average and maximum daily rate of fluids to be injected.
 - f. ~~Appropriate--analyses--of-fresh-water-from-the-two-nearest freshwater-wells.--This-requirement-may-be-waived--by--the~~

- director in certain instances. Average and maximum injection pressure.
- g. Source and appropriate analysis of injection fluid and compatibility with the receiving formation. Geologic name and depth to base of all underground sources of drinking water which may be affected by the injection.
- h. Appropriate geological data on the injection zone and confining zones including lithologic description, geological name, thickness, and depth. Existing or proposed casing, tubing, and packer data.
- i. Geologic name, and depth to bottom of all underground sources of drinking water which may be affected by the injection. A plat depicting the area of review (one-fourth-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
- j. Schematic drawings of the surface and subsurface construction details of the system. A tabulation of data on all wells of public record within the area of review that penetrated the proposed injection zone. Include the following data: location, date drilled, total depth, well type, construction, record of plugging or completion, and any additional information the commission may require.
- k. Proposed injection program. The need for corrective action on wells penetrating the injection zone in the area of review.
- l. All available logging and testing data on the well. Proposed injection program.
- m. The need for corrective action on wells penetrating the injection zone in the area of review. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells. Location of wells must also be submitted. This requirement may be waived by the director in certain instances.
- n. The estimated fracture pressure of the confining zone. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
- o. Certification that all landowners within the area of review have been notified of the proposed injection well

~~and--that--a--hearing--will--be--held-~~ List identifying all source wells or sources of injectate.

- p. A legal description of the land ownership within the area of review.
 - q. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
 - r. All logging and testing data on the well which has not been previously submitted.
 - s. Schematic drawings of the injection system including current well bore construction and proposed well bore and surface facility construction.
 - t. Sundry notice detailing the proposed procedure.
2. Permits may contain such terms and conditions as the commission deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
 4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
 5. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
 6. Permits are transferable only with approval of the commission.
 7. Permits may be modified by the commission.
 8. Before a permit for underground injection will be issued, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.

9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-06. Construction requirements.

1. All injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in construction of each new injection well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, all of the following factors shall be considered:
 - a. Depth to the injection zone.
 - b. Depth to the bottom of all underground sources of drinking water.
 - c. Estimated maximum and average injection pressures.
 - d. Fluid pressure.
 - e. Estimated fracture pressure.
 - f. Physical and chemical characteristics of the injection zone.
2. Appropriate logs and other tests shall be conducted during the drilling and construction of injection wells. Any well drilled or converted to an injection well shall have a log run from which the quality of the cement bond can be determined. Cement bond logs shall contain at least the following elements: a gamma ray curve; a casing collar locator curve; a transit time curve; an amplitude curve; and a variable density curve. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the commission if deemed necessary by the director.
3. All injection wells must be equipped with tubing and packer.

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-07. Mechanical integrity.

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. All existing injection wells must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing, or packer; and
 - b. There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
 - a. Pressure test with liquid or gas.
 - b. Monitoring of annulus pressure.
 - c. Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate.
 - d. Spinner survey.
 - e. Radioactive tracer survey.
3. One of the following methods must be used to establish the absence of significant fluid movement:
 - a. Well records demonstrating the presence of adequate cement to prevent such migration.
 - b. The results of a temperature or noise log.

History: Effective November 1, 1982; amended effective May 1, 1990; July 1, 1996.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-12. Reporting and monitoring requirements.

1. The operator of an injection well shall meter or use an approved method to keep records and shall report monthly to the industrial commission, oil and gas division, the volume and nature, i.e., produced water, makeup water, etc., of the fluid injected, the injection pressure, and such other information as the commission may require. The operator of

each injection well shall, on or before the fifth day of the second month succeeding the month in which the well is capable of injection occurs, file with the director a sworn statement showing the amount of injection by each well upon forms furnished therefor, or approved computer sheets. The operator shall retain all records required by the industrial commission for at least three five years.

2. Immediately upon the commencement or recommencement of injection, the operator shall notify the oil and gas division of the injection date.
3. ~~Within ten days after the discontinuance of injection operations, the operator shall notify the oil and gas division of the date of such discontinuance and the reason therefor.~~ The operator shall place accurate gauges on the tubing and the tubing-casing annulus. Accurate gauges shall also be placed on any other annuluses deemed necessary by the director.
4. The operator of an injection well shall keep the well and injection system under continuing surveillance and conduct such monitoring and sampling as the commission may require.
5. The operator of an injection well shall report any noncompliance with regulations or permit conditions to the director orally within twenty-four hours followed by a written explanation within five days. The operator shall cease injection operations if so directed by the director.
6. Within ten days after the discontinuance of injection operations, the operator shall notify the oil and gas division of the date of such discontinuance and the reason therefor.
7. Upon the completion or recompletion of an injection well or the completion of any remedial work or attempted remedial work such as plugging back, deepening, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, tubing repairs, packer repairs, casing repairs, or other similar operations not specifically covered herein, a report on the operation shall be filed on a form 4 sundry notice with the director. The report shall present a detailed account of all work done including the reason for the work, the date of such work, the shots per foot and size and depth of perforations, the quantity of sand, crude, chemical, or other materials employed in the operation, the size and type of tubing, the type and location of packer, the result of the packer pressure test, and any other

pertinent information or operations which affect the status of the well and are not specifically covered herein.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

CHAPTER 43-02-08

43-02-08-02. Application for stripper well property determination. Any operator desiring to classify a property as a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1 shall file an application for stripper well property determination with the director and obtain a determination certifying the property as a stripper well property. The applicant has the burden of establishing entitlement to stripper well property status and shall submit all data necessary for a determination by the director.

The application must include, but is not limited to, the following:

1. A fee in an the amount to be set by the commission of one hundred dollars.
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. The legal description of the property for which a determination is requested.
4. The well name and number and legal description of each oil-producing well on the property during the qualifying period and at the time of application.
5. The depth of all perforations (measured in feet from ground level) from each producing well on the property during the qualifying period which produces from the same pool.
6. Designation of the property which the applicant requests to be certified as a stripper well property. Such designation must be accompanied by sufficient documentation for the director to determine (as set forth in section 43-02-08-02.1) that the property the applicant desires to be certified as a stripper well property constitutes a property as specified in subsection 4 of North Dakota Century Code section 57-51.1-01.
7. The monthly production of each oil-producing well on the property during the qualifying period.
8. An affidavit stating that all working interest owners of the property, and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.
9. The application must be submitted to the commission within twelve months after the end of the stripper well property's qualification period.

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. Director shall determine stripper well property status.

1. Upon receipt of an application for stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
 - a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - b. Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
 - c. Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of twenty thirty barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application. The application must be submitted to the commission within twelve months after the end of the stripper well property's qualification period.
4. If an application for stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an

application for stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting written comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

CHAPTER 43-02-09

43-02-09-02. Exemption from taxes. Production from a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production, upon which a workover project has been performed, is exempt from taxes imposed pursuant to North Dakota Century Code chapter 57-51.1 for twelve months beginning with the first day of the third calendar month after the completion of a workover project if:

1. The commission has received a notice of intention to begin a workover project in accordance with section 43-02-09-03.
2. A workover project is performed on the well.
3. The cost of the workover project exceeds sixty-five thousand dollars, or if the average daily production is increased at least fifty percent during the first two months after completion of the workover project, based upon a comparison to the average daily production for the latest six calendar months of continuous production prior to the filing of the notice of intention to begin a workover project.

For the exemption from the oil extraction tax for workover projects pursuant to North Dakota Century Code section 57-51.1-03, the reentry of a plugged and abandoned well is a workover project provided the cost of the operation exceeds sixty-five thousand dollars. The application must be submitted to the commission within twelve months after the completion of the workover project.

History: Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

43-02-09-03. Notice of intention to begin a workover project. If an exemption from taxation is sought pursuant to subsection 4 of North Dakota Century Code section 57-51.1-03, a notice of intention to begin a workover project must be filed by the well operator with the commission prior to commencement of the project. The notice of intention must be sent by certified mail to the following address:

North Dakota State Industrial Commission
Oil and Gas Division
600 East Boulevard
Bismarck, North Dakota 58505-0840

The notice of intention must include, but is not limited to, the following:

1. A sundry notice (form 4) upon which it is clearly indicated that it is a notice of intention to perform a workover project which may qualify production from the well for an exemption from taxation pursuant to subsection 4 of North Dakota Century Code section 51-51.1-03.
2. The sundry notice must contain a detailed description of the nature and scope of the workover project. The information provided must also include a description of all replacement equipment to be installed that is known to the well operator at the time of filing, and whether such equipment is new or used.
3. The average daily production during the latest six calendar months of continuous production.

The operator of the well to be worked over shall make arrangements with the director to determine the crude oil inventory stored on the well premises immediately before the commencement of the workover. Also, all gauge tickets for the month must be submitted if required by the director.

Workover projects must be completed within one year after the initial notice of intention to perform a workover is filed. Thereafter such notice is null and void.

History: Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

43-02-09-04. Application for workover project determination. The applicant has the burden of establishing entitlement to the exemption provided in North Dakota Century Code section 57-51.1-03 and upon completion of the workover project shall submit all information necessary for a determination by the director. The cost of a workover project includes only direct costs for material, equipment, services, and labor used in the workover project. Labor and services included must be performed onsite and materials and equipment must be used onsite. The value of capital equipment removed from the site must be deducted from the cost of the project.

The application must include the following:

1. A fee in the amount of one hundred dollars.
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. The well name and number and legal description of the well.

4. The dates during which the workover rig was in service actually performing work on the workover project, and the date the workover was completed.
5. A detailed list identifying all labor, services, and materials used and equipment replaced during the workover project, the cost of each item, and whether the replacement equipment was new or used. Also, the value of all of the equipment removed from service must be listed. The list must be verified by a person knowledgeable in the costs of workover projects and the value of used equipment. At any time the director may require the applicant to submit actual invoices to verify any costs set forth in the application.
6. A sundry notice (form 4) detailing all work done.
7. The average daily oil production from the well during the first two months after completion of the project, if the costs of the project did not exceed sixty-five thousand dollars. The project is completed and the two-month period commences the first day of production through the wellhead equipment after the workover rig is removed from over the well.
8. All gauge tickets of oil produced in incomplete months during the first two months after completion of the workover, and the volume of oil stored on the well premises immediately prior to the commencement of the workover project.

The application must be submitted to the commission within twelve months after the completion of the workover project.

If the application does not contain sufficient information to make a determination, the director will advise the applicant of the additional information that must be filed in order to make a determination. If the requested additional information is not received within fifteen working days after receipt of the request, the application ~~must~~ will be returned to the ~~well-operator~~ applicant.

History: Effective May 1, 1990; amended effective May 1, 1992; May 1, 1994; July 1, 1996.

General Authority: NDCC 38-08-04, 57-51.1-03

Law Implemented: NDCC 57-51.1-03

43-02-09-06. Notice to tax department. If the director determines a well is entitled to a tax exemption under this chapter, the director shall send a notice to the ~~North-Dakota-tax-department~~ state tax commissioner stating:

1. That the workover project meets the requirements set forth in North Dakota Century Code section 57-51.1-03.
2. The name and number of the well.

3. The location of the well.
4. The name of the well operator applying for the tax exemption.
5. The date the notice of intention was filed.
6. The average daily production of the well during the latest six calendar months of continuous production prior to the commencement of the workover project.
7. The cost of the workover project.
8. The average daily production of the well as determined pursuant to subsection 7 of section 43-02-09-04.
9. The dates during which the workover project was performed.

The notice required under this section must be signed by a representative of the commission.

History: Effective May 1, 1990; amended effective May 1, 1992; July 1, 1996.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

CHAPTER 43-02-10

43-02-10-02. Application to certify a qualifying secondary recovery project. Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying secondary recovery project, and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively. The application must be submitted to the commission within twelve months after the month in which the first incremental oil was produced.

History: Effective May 1, 1992; amended effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, ~~57-51.1-01~~ 57-51.1-03

43-02-10-04. Application to certify a qualifying tertiary recovery project. Any unit operator desiring to certify a tertiary recovery project as a "qualifying tertiary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying tertiary recovery project, and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively. The application must be submitted to the commission within twelve months after the month in which the first incremental oil was produced.

History: Effective May 1, 1992; amended effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, ~~57-51.1-01~~ 57-51.1-03

STAFF COMMENT: Chapter 43-02-11 contains all new material and is not underscored so as to improve readability.

**CHAPTER 43-02-11
CERTIFICATION OF NEW WELLS, HORIZONTAL WELLS, HORIZONTAL
REENTRY WELLS, AND TWO-YEAR INACTIVE WELLS**

Section	
43-02-11-01	Definitions
43-02-11-02	Application to Certify as Qualifying A New Well, Horizontal Well, Horizontal Reentry Well, or Two-Year Inactive Well
43-02-11-03	Application for a Tax Exemption and Reduction for a New Well
43-02-11-04	Application for Tax Exemption and Reduction for a Horizontal Well
43-02-11-05	Application for Tax Exemption and Reduction for a Horizontal Reentry Well
43-02-11-06	Application for Tax Exemption and Reduction for a Two-Year Inactive Well

43-02-11-01. Definitions. The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well after March 31, 1995. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well after March 31, 1995.
2. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].
3. "New well" means a well that was spudded and completed after April 27, 1987.
4. "Two-year inactive well" means a well that has not produced oil in more than one month in the twenty-four-month period immediately preceding the date an application for well status is received by the industrial commission. A well that has

never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-11-02. Application to certify as qualifying a new well, horizontal well, horizontal reentry well, or two-year inactive well. Any operator desiring to certify a horizontal, horizontal reentry, or two-year inactive well as a "qualifying well" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether a well is a qualifying well and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively. The application must be received by the commission within seventeen months after the qualification period, completion or recompletion, in order to receive the tax exemption and reduction from the first day of eligibility.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-11-03. Application for a tax exemption and reduction for a new well. The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the location of the well for which determination is requested.
3. The date the well was spudded, its completion date, and the volume of oil produced prior to completion, if any.
4. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

Test oil produced from a new well prior to completion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-11-04. Application for tax exemption and reduction for a horizontal well. The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the surface location of the well for which a determination is requested.
3. The date the well was spudded, its completion date, and the volume of oil produced prior to completion, if any.
4. The length of the horizontal leg of the well bore within the productive formation and its inclination.
5. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the well have been notified of the application by certified or registered mail.

Test oil produced from a horizontal well prior to completion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-11-05. Application for tax exemption and reduction for a horizontal reentry well. The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the surface location of the well for which a determination is requested.
3. The dates the well was initially spudded and completed as a vertical well, the dates the well was reentered and

recompleted as a horizontal well, the total volume of test oil recovered prior to recompletion, and, if applicable, the date the well was initially plugged and abandoned as a dry hole.

4. The length of the horizontal leg of the well bore within the productive formation, and its inclination.
5. The total volume of test oil recovered prior to completion.
6. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the well have been notified of the application by certified or registered mail.

Test oil produced from a horizontal reentry well is exempt from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-11-06. Application for tax exemption and reduction for a two-year inactive well. The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the location of the well for which a determination is requested.
3. Monthly production during the two years prior to date of application.
4. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

Test oil produced from a two-year inactive well prior to recompletion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

The application must be submitted to the commission within twelve months after the month in which the well was returned to recompletion.

History: Effective July 1, 1996.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

TITLE 45
Insurance, Commissioner of

August 1996

CHAPTER 45-04-01

45-04-01-03. Definitions. For the purposes of this chapter, the following definitions shall apply:

1. "Buyer's guide" means ~~a document which contains, and is limited to, the language contained in the appendix to this chapter~~ the current version of the national association of insurance commissioners life insurance buyer's guide or language approved by the commissioner of insurance.
2. "Cash dividend" means the current illustrated dividend which can be applied toward payment of the gross premium.
3. "Equivalent level annual dividend" is calculated by applying the following steps:
 - a. Accumulate the annual cash dividends at five percent interest compounded annually to the end of the tenth and twentieth policy years.
 - b. Divide each accumulation in subdivision a by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in subdivision a over the respective periods stipulated in subdivision a. If the period is ten years, the factor is 13.207, and if the period is twenty years, the factor is 34.719.
 - c. Divide the results of subdivision b by the number of thousands of the equivalent level death benefit to arrive at the equivalent level annual dividend.

4. "Equivalent level death benefit" of a policy or term life insurance rider is an amount calculated as follows:
 - a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and twenty years at five percent interest compounded annually to the end of the tenth and twentieth policy years respectively.
 - b. Divide each accumulation of subdivision a by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subdivision a over the respective periods stipulated in subdivision a. If the period is ten years, the factor is 13.207, and if the period is twenty years, the factor is 34.719.
5. "Generic name" means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.
6. "Life insurance cost indexes" are calculated as follows:
 - a. "Life insurance net payment cost index" is calculated in the same manner as the comparable life insurance cost index except that the cash surrender value and any terminal dividend are set at zero.
 - b. "Life insurance surrender cost index" is calculated by applying the following steps:
 - (1) Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.
 - (2) For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual cash dividends at five percent interest compounded annually to the end of the period selected and add this sum to the amount determined in paragraph 1.
 - (3) Divide the result of paragraph 2. (Paragraph 1 for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph 2. (Paragraph 1 for guaranteed-cost policies) over the respective periods stipulated in paragraph 1. If the period is ten years, the factor is 13.207, and if the period is twenty years, the factor is 34.719.
 - (4) Determine the equivalent level premium by accumulating each annual premium payable for the

basic policy or rider at five percent interest compounded annually to the end of the period stipulated in paragraph 1 and dividing the result by the respective factors stated in paragraph 3. (This amount is the annual premium payable for a level premium plan.)

- (5) Subtract the result of paragraph 3 from paragraph 4.
 - (6) Divide the result of paragraph 5 by the number of thousands of the equivalent level death benefit to arrive at the life insurance surrender cost index.
7. "Policy summary" means a basic illustration as defined in chapter 45-04-01.1 for policy forms for which the company chooses to illustrate under chapter 45-04-01.1, otherwise it means a written statement using elements guaranteed in the policy only describing the elements of the policy including ~~but not limited to:~~
- a. A prominently placed title as follows: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION".
 - b. The name and address of the insurance agent, or if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.
 - c. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.
 - d. The generic name of the basic policy and each rider.
 - e. The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which life insurance cost indexes are displayed and at least one age from sixty through sixty-five or maturity, whichever is earlier:
 - (1) The annual premium for the basic policy.
 - (2) The annual premium for each optional rider.
 - (3) The guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death, other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

- (4) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.
 - (5) The cash dividends payable at the end of the year with value shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the twentieth policy year.)
 - (6) The guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.
- f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the policy summary includes the maximum annual percentage rate.
 - g. Life insurance cost indexes for ten and twenty years but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than twelve months and guaranteed insurability benefits nor for the basic policies or optional riders covering more than one life.
 - h. The equivalent level annual dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which life insurance cost indexes are displayed.
 - i. A policy summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed in addition to a statement in close proximity to the equivalent level annual dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide."
 - j. A statement in close proximity to the life insurance costs indexes as follows: "An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."
 - k. The date on which the policy summary is prepared.

The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subdivision e shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

History: Effective January 1, 1980; amended effective January 1, 1997.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-01-08, 26.1-33-02

45-04-01-07. Effective date. This chapter shall apply to all solicitations of life insurance which commence on or after January 1, 1980. Amendments to subsections 1 and 7 of section 45-04-01-03 and the appendix are effective January 1, 1997.

History: Effective January 1, 1980; amended effective January 1, 1997.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-01-08, 26.1-33-02

The Appendix attached to Chapter 45-04-01 is deleted in its entirety, effective January 1, 1997.

APPENDIX

Life-Insurance-Buyer's-Guide

The-face-page-of-the-Buyer's-Guide-shall-read-as-follows:

Life-Insurance-Buyer's-Guide

This--guide--can-show-you-how-to-save-money-when-you-shop-for-life insurance.--It-helps-you-to:

- Decide-how-much-life-insurance-you-should-buy;
- Decide-what-kind-of-life-insurance-policy-you-need; and
- Compare-the-cost-of-similar-life-insurance-policies.

Prepared-by-the-National-Association-of-Insurance-Commissioners:

Reprinted by ---- (Company Name)
(Month and Year of Printing)

The Buyer's Guide shall contain the following language at the bottom of page 2:

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.

This Guide Does Not Endorse Any Company or Policy.

The remaining text of the Buyer's Guide shall begin on page 3 as follows:

Buying Life Insurance

When you buy life insurance, you want a policy which fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay, and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes which are described in this Guide. A good life insurance agent or company will be able and willing to help you with each of these shopping steps.

If you are going to make a good choice when you buy life insurance, you need to understand what kinds are available. If one kind does not seem to fit your needs, ask about the other kinds which are described in this Guide. If you feel that you need more information than is given here, you may want to check with a life insurance agent or company or books on life insurance in your public library.

Choosing The Amount

One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. You should think of life insurance as a source of cash needed for expenses of final illnesses, paying taxes, mortgages or other debts. It can also provide income for your family's living expenses, educational costs and other future expenses. Your new policy should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need.

Choosing The Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance:

1.---Term-Insurance.

2.---Whole-Life-Insurance.

3.---Endowment-Insurance.

Remember,---no---matter---how---fancy---the---policy---title---or---sales presentation---might---appear,---all---life---insurance---policies---contain---one---or more---of---the---three---basic---kinds.---If---you---are---confused---about---a---policy---that sounds---complicated,---ask---the---agent---or---company---if---it---combines---more---than one---kind---of---life---insurance.---The---following---is---a---brief---description---of---the three---basic---kinds:

Term-Insurance

Term---insurance---is---a---death---protection---for---a---"term"---of---one---or---more years.---Death---benefits---will---be---paid---only---if---you---die---within---that---term---of years.---Term---insurance---generally---provides---the---largest---immediate---death protection---for---your---premium---dollar.

Some---term---insurance---policies---are---"renewable"---for---one---or---more additional---terms---even---if---your---health---has---changed.---Each---time---you---renew the---policy---for---a---new---term,---premiums---will---be---higher.---You---should---check the---premiums---at---older---ages---and---the---length---of---time---the---policy---can---be continued.

Some---term---insurance---policies---are---also---"convertible".---This---means that---before---the---end---of---the---conversion---period,---you---may---trade---the---term policy---for---a---whole---life---or---endowment---insurance---policy---even---if---you---are not---in---good---health.---Premiums---for---the---new---policy---will---be---higher---than---you have---been---paying---for---the---term---insurance.

Whole-Life-Insurance

Whole---life---insurance---gives---death---protection---for---as---long---as---you live.---The---most---common---type---is---called---"straight---life"---or---"ordinary---life" insurance,---for---which---you---pay---the---same---premiums---for---as---long---as---you---live. These---premiums---can---be---several---times---higher---than---you---would---pay---initially for---the---same---amount---of---term---insurance.---But---they---are---smaller---than---the premiums---you---would---eventually---pay---if---you---were---to---keep---renewing---a---term insurance---policy---until---your---later---years.

Some---whole---life---policies---let---you---pay---premiums---for---a---shorter---period such---as---20---years,---or---until---age---65.---Premiums---for---these---policies---are higher---than---for---ordinary---life---insurance---since---the---premium---payments---are squeezed---into---a---shorter---period.

Although---you---pay---higher---premiums,---to---begin---with,---for---whole---life insurance---than---for---term---insurance,---whole---life---insurance---policies---develop "cash---values"---which---you---may---have---if---you---stop---paying---premiums.---You---can generally---either---take---the---cash,---or---use---it---to---buy---some---continuing insurance---protection.---Technically---speaking,---these---values---are---called "nonforfeiture---benefits".---This---refers---to---benefits---you---do---not---lose---(or

"forfeit")--when-you-stop-paying-premiums.--The-amount-of-these-benefits depends-on-the-kind-of-policy-you-have;-its-size;-and-how-long-you--have owned-it.

A--policy--with--cash--values-may-also-be-used-as-collateral-for-a loan.--If-you-borrow-from--the--life--insurance--company;--the--rate--of interest--is--shown-in-your-policy.--Any-money-which-you-owe-on-a-policy loan-would-be-deducted-from-the-benefits-if-you-were-to-die;-or-from-the cash-value-if-you-were-to-stop-paying-premiums.

Endowment-Insurance

An--endowment--insurance--policy-pays-a-sum-or-income-to-you---the policyholder---if-you-live-to-a-certain-age.--If-you-were-to-die--before then;-the-death-benefit-would-be-paid-to-your-beneficiary.--Premiums-and cash-values-for-endowment-insurance-are-higher-than-for-the-same--amount of--whole--life-insurance.--Thus-endowment-insurance-gives-you-the-least amount-of-death-protection-for-your-premium-dollar.

Finding-a-Low-Cost-Policy

After--you--have--decided--which--kind-of-life-insurance-fits-your needs;-look-for-a-good-buy.--Your-chances-of--finding--a--good--buy--are better-if-you-use-two-types-of-index-numbers-that-have-been-developed-to aid-in-shopping-for-life-insurance.--One-is-called-the--"Surrender--Cost Index"--and-the-other-is-the--"Net-Payment-Cost-Index".--It-will-be-worth your-time-to-try-to-understand-how-these-indexes-are-used;--but--in--any event;--use--them--only--for--comparing--the--relative--costs-of-similar policies.--LOOK-FOR-POLICIES-WITH-LOW-COST-INDEX-NUMBERS.

What-Is-Cost?

"Cost"--is--the--difference--between-what-you-pay-and-what-you-get back.--If-you-pay-a-premium-for-life-insurance--and--get--nothing--back; your-cost-for-the-death-protection-is-the-premium.--If-you-pay-a-premium and-get-something-back-later-on;-such-as-a--cash--value;--your--cost--is smaller-than-the-premium.

The--cost-of-some-policies-can-also-be-reduced-by-dividends;-these are-called-"participating"-policies.--Companies-may-tell-you-what--their current-dividends-are;-but-the-size-of-future-dividends-is-unknown-today and-cannot-be-guaranteed.--Dividends-actually-paid-are-set-each-year--by the-company.

Some--policies-do-not-pay-dividends.--These-are-called-"guaranteed cost"-or-"nonparticipating"-policies.--Every--feature--of--a--guaranteed cost--policy--is-fixed-so-that-you-know-in-advance-what-your-future-cost will-be.

The--premiums--and--cash--values--of--a--participating--policy-are guaranteed;-but-the--dividends--are--not.--Premiums--for--participating policies-are-typically-higher-than-for-guaranteed-cost-policies;-but-the

cost-to-you-may-be-higher-or-lower,-depending-on-the-dividends--actually paid.

What-Are-Cost-Indexes?

In-order-to-compare-the-cost-of-policies,-you-need-to-look-at:

- 1.--Premiums.
- 2.--Cash-Values.
- 3.--Dividends.

Cost--indexes--use--one--or--more--of--these-factors-to-give-you-a convenient-way-to-compare-relative-costs-of-similar-policies.--When--you compare--costs,-an--adjustment--must--be-made-to-take-into-account-that money-is-paid-and-received-at-different-times.--It-is-not-enough-to-just add--up--the--premiums--you--will--pay--and-subtract-the-cash-values-and dividends-you-expect-to-get--back,---These--indexes--take--care--of--the arithmetic--for--you.--Instead-of-having-to-add,-subtract,-multiply,-and divide-many-numbers-yourself-you-just-compare-the--index--numbers--which you-can-get-from-life-insurance-agents-and-companies:

1. Life--Insurance-Surrender-Cost-Index.--This-index-is-useful-if you-consider-the-level-of-the-cash-values--to--be--of--primary importance--to--you,---It-helps--you-compare-costs-if-at-some future-point-in-time,-such-as-10-or-20-years,-if-you--were--to surrender-the-policy-and-take-its-cash-value.
2. Life--Insurance--Net-Payment-Cost-Index.--This-index-is-useful if-your-main-concern-is-the-benefits-that-are-to--be--paid--at your--death--and--if--the-level-of-cash-values-is-of-secondary importance-to-you.--It-helps-you-compare-costs-at-some--future point--in-time,-such-as-10-or-20-years,-if-you-continue-paying premiums-on-your-policy-and-do-not-take-its-cash-value.

There--is--another--number--called--the--Equivalent--Level--Annual Dividend.--It-shows-the-part-dividends--play--in--determining--the--cost index--of--a--participating--policy.--Adding-a-policy's-Equivalent-Level Annual-Dividend-to-its-cost-index-allows-you-to-compare-total--costs--of similar--policies--before-deducting-dividends.--However,-if-you-make-any cost-comparisons-of--a--participating--policy--with--a--nonparticipating policy,-remember-that-the-total-cost-of-the-participating-policy-will-be reduced-by-dividends,-but-the-cost-of-the-nonparticipating--policy--will not-change.

How-Do-I-Use-Cost-Indexes?

The--most--important--thing-to-remember-when-using-cost-indexes-is that-a-policy-with-a-small-index-number-is-generally-a-better-buy-than-a comparable--policy--with-a-larger-index-number.--The-following-rules-are also-important:

- 1.--Cost--comparisons--should--only--be--made--between--similar--plans--of--life--insurance.---Similar--plans--are--those--which---provide--essentially--the--same--basic--benefits--and--require--premium--payments--for--approximately--the--same--period--of--time.---The--closer--policies--are--to--being--identical,--the--more--reliable--the--cost--comparison--will--be.
- 2.--Compare--index--numbers--only--for--the--kind--of--policy,--for--your--age--and--for--the--amount--you--intend--to--buy.---Since--no--one--company--offers--the--lowest--cost--for--all--types--of--insurance--at--all--ages--and--for--all--amounts--of--insurance,--it--is--important--that--you--get--the--indexes--for--the--actual--policy,--age--and--amount--which--you--intend--to--buy.---Just--because--a--"Shopper's--Guide"--tells--you--that--one--company's--policy--is--a--good--buy--for--a--particular--age--and--amount,--you--should--not--assume--that--all--of--the--company's--policies--are--equally--good--buys.
- 3.--Small--differences--in--index--numbers--could--be--offset--by--other--policy--features,--or--differences--in--the--quality--of--service--you--may--expect--from--the--company--or--its--agent.---Therefore,--when--you--find--small--differences--in--cost--indexes,--your--choice--should--be--based--on--something--other--than--cost.
- 4.--In--any--event,--you--will--need--other--information--on--which--to--base--your--purchase--decision.---Be--sure--you--can--afford--the--premiums,--and--that--you--understand--its--cash--values,--dividends,--and--death--benefits.---You--should--also--make--a--judgment--on--how--well--the--life--insurance--company--or--agent--will--provide--service--in--the--future,--to--you--as--a--policyholder.
- 5.--These--life--insurance--cost--indexes--apply--to--new--policies--and--should--not--be--used--to--determine--whether--you--should--drop--a--policy--you--have--already--owned--for--a--while,--in--favor--of--a--new--one.---If--such--a--replacement--is--suggested,--you--should--ask--for--information--from--the--company--which--issued--the--old--policy--before--you--take--action.

Important Things To Remember---A Summary

The--first--decision--you--must--make--when--buying--a--life--insurance--policy--is--choosing--a--policy--whose--benefits--and--premiums--most--closely--meet--your--needs--and--ability--to--pay.---Next,--find--a--policy--which--is--also--a--relatively--good--buy.---If--you--compare--Surrender--Cost--Indexes--and--Net--Payment--Cost--Indexes--of--similar--competing--policies,--your--chances--of--finding--a--relatively--good--buy--will--be--better--than--if--you--do--not--shop. REMEMBER,--LOOK--FOR--POLICIES--WITH--LOWER--COST--INDEX--NUMBERS.---A--good--life--insurance--agent--can--help--you--to--choose--the--amount--of--life--insurance--and--kind--of--policy--you--want--and--will--give--you--cost--indexes--so--that--you--can--make--cost--comparisons--of--similar--policies.

Don't--buy--life--insurance--unless--you--intend--to--stick--with--it.---A--policy--which--is--a--good--buy--when--held--for--20--years--can--be--very--costly--if--you--quit--during--the--early--years--of--the--policy.---If--you--surrender--such--a

policy-during-the-first-few-years,-you-may-get-little-or-nothing-back
and-much-of-your-premium-may-have-been-used-for-company-expenses.

Read-your-new-policy-carefully,-and-ask-the-agent-or-company-for
an-explanation-of-anything-you-do-not-understand.-Whatever-you-decide
now,-it-is-important-to-review-your-life-insurance-program-every-few
years-to-keep-up-with-changes-in-your-income-and-responsibilities.

STAFF COMMENT: Chapter 45-04-01.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 45-04-01.1
LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION**

Section	
45-04-01.1-01	Applicability and Scope
45-04-01.1-02	Definitions
45-04-01.1-03	Policies to be Illustrated
45-04-01.1-04	General Rules and Prohibitions
45-04-01.1-05	Standards for Basic Illustrations
45-04-01.1-06	Standards for Supplemental Illustrations
45-04-01.1-07	Delivery of Illustrations and Record Retention
45-04-01.1-08	Annual Report - Notice to Policy Owners
45-04-01.1-09	Annual Certifications
45-04-01.1-10	Effective Date

45-04-01.1-01. Applicability and scope. This chapter is intended to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. As far as possible, insurers will eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed. This chapter applies to all group and individual life insurance policies and certificates except:

1. Variable life insurance;
2. Individual and group annuity contracts;
3. Credit life insurance; or
4. Life insurance policies with no illustrated death benefits on any individual exceeding ten thousand dollars.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-02. Definitions. For the purposes of this chapter:

1. "Actuarial standards board" means the board established by the American academy of actuaries to develop and promulgate standards of actuarial practice.

2. "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.
3. "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five days.
4. "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer which is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the actuarial standards board may be relied upon if the standards:
 - a. Are consistent with all provisions of this chapter;
 - b. Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
 - c. Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
 - d. Do not permit assumed expenses to be less than minimum assumed expenses.
5. "Generic name" means a short title descriptive of the policy being illustrated such as "whole life", "term life", or "flexible premium adjustable life".
6. "Guaranteed elements" and "nonguaranteed elements" mean:
 - a. "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are guaranteed and determined at issue.
 - b. "Nonguaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are not guaranteed or not determined at issue.
7. "Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:
 - a. The disciplined current scale; or

- b. The currently payable scale.
8. "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:
- a. "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.
 - b. "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.
 - c. "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this chapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.
9. "Illustration actuary" means an actuary meeting the requirements of section 45-04-01.1-09 who certifies to illustrations based on the standard of practice promulgated by the actuarial standards board.
10. "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this chapter, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and one hundred percent policy persistency thereafter.
11. a. "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:
- (1) Fully allocated expenses;
 - (2) Marginal expenses; and
 - (3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.
- b. Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

12. "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:
 - a. Every plan of coverage was selected by the employer or other group representative;
 - b. Some portion of the premium is paid by the group or through payroll deduction; and
 - c. Group underwriting or simplified underwriting is used.
13. "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.
14. "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out of pocket.
15. "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-03. Policies to be illustrated.

1. Each insurer marketing policies to which this chapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on January 1, 1997, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after January 1, 1997, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.
2. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

3. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this chapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.
4. Potential enrollees of nonterm group life subject to this chapter must be furnished a quotation with the enrollment materials. The quotation must show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation may not be considered an illustration for purposes of this chapter, but all information provided must be consistent with the illustrated scale. A basic illustration must be provided at delivery of the certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-04. General rules and prohibitions.

1. An illustration used in the sale of a life insurance policy must satisfy the applicable requirements of this chapter, be clearly labeled life insurance illustration, and contain the following basic information:
 - a. Name of insurer;
 - b. Name and business address of producer or insurer's authorized representative, if any;
 - c. Name, age, and sex of proposed insured, except where a composite illustration is permitted under this chapter;
 - d. Underwriting or rating classification upon which the illustration is based;
 - e. Generic name of policy, the company product name, if different, and form number;

- f. Initial death benefit; and
 - g. Dividend option election or application of nonguaranteed elements, if applicable.
2. When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:
- a. Represent the policy as anything other than a life insurance policy;
 - b. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
 - c. State or imply that the payment or amount of nonguaranteed elements is guaranteed;
 - d. Use an illustration that does not comply with the requirements of this chapter;
 - e. Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
 - f. Provide an applicant with an incomplete illustration;
 - g. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
 - h. Use the term "vanish" or "vanishing premium" or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
 - i. Except for policies that can never develop nonforfeiture values, use an illustration that is lapse-supported; or
 - j. Use an illustration that is not self-supporting.
3. If an interest rate used to determine the illustrated nonguaranteed elements is shown, it may not be greater than the earned interest rate underlying the disciplined current scale.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-05. Standards for basic illustrations.

1. **Format.** A basic illustration must conform with the following requirements:
 - a. The illustration must be labeled with the date on which it was prepared.
 - b. Each page, including any explanatory notes or pages, must be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
 - c. The assumed dates of payment receipt and benefit payout within a policy year must be clearly identified.
 - d. If the age of the proposed insured is shown as a component of the tabular detail, it must be issue age plus the numbers of years the policy is assumed to have been in force.
 - e. The assumed payments on which the illustrated benefits and values are based must be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments must be identified as premium outlay.
 - f. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium must be shown and clearly labeled guaranteed.
 - g. If the illustration shows any nonguaranteed elements, they may not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements must be clearly labeled nonguaranteed.
 - h. The guaranteed elements, if any, must be shown before corresponding nonguaranteed elements and must be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page one for guaranteed elements").
 - i. The account or accumulation value of a policy, if shown, must be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
 - j. The value available upon surrender must be identified by the name this value is given in the policy being illustrated and must be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable.

- k. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.
 - l. Any illustration of nonguaranteed elements must be accompanied by a statement indicating that:
 - (1) The benefits and values are not guaranteed;
 - (2) The assumptions on which they are based are subject to change by the insurer; and
 - (3) Actual results may be more or less favorable.
 - m. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure must be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display may not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.
 - n. If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.
2. **Narrative summary.** A basic illustration must include the following:
- a. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;
 - b. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration must show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;
 - c. A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

- d. Identification and a brief definition of column headings and key terms used in the illustration; and
- e. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

3. Numeric summary.

- a. Following the narrative summary, a basic illustration must include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values must be based on the contract premium. This summary must be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple life policies the summary shall show for at least policy years five, ten, twenty, and thirty.

- (1) Policy guarantees;

- (2) Insurer's illustrated scale;

- (3) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

- (a) Dividends at fifty percent of the dividends contained in the illustrated scale used;

- (b) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

- (c) All nonguaranteed charges, including term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

- b. In addition, if coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases must be identified for each of the three bases.

- 4. Statements.** Statements substantially similar to the following must be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this chapter.

- a. A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."
- b. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

5. Tabular detail.

- a. A basic illustration must include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:
 - (1) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;
 - (2) The corresponding guaranteed death benefit, as provided in the policy; and
 - (3) The corresponding guaranteed value available upon surrender, as provided in the policy.
- b. For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender must correspond to the contract premium.
- c. Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero must be displayed in the guaranteed column.

History: Effective January 1, 1997.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-33-02

45-04-01.1-06. Standards for supplemental illustrations.

1. A supplemental illustration may be provided as long as:
 - a. It is appended to, accompanied by, or preceded by a basic illustration that complies with this chapter;
 - b. The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
 - c. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and
 - d. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration must be equal to the premium outlay shown in the basic illustration.
2. The supplemental illustration must include a notice referring to the basic illustration for guaranteed elements and other important information.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-07. Delivery of illustration and record retention.

1. a. If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this chapter, must be submitted to the insurer at the time of policy application. A copy also must be provided to the applicant.
- b. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued must be sent with the policy. The revised illustration must conform to the requirements of this chapter, be labeled "Revised Illustration" and must be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy must be provided to the insurer and the policy owner.

2. a. If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form must be submitted to the insurer at the time of policy application.
- b. If the policy is issued, a basic illustration conforming to the policy as issued must be sent with the policy and signed no later than the time the policy is delivered. A copy must be provided to the insurer and the policy owner.
3. If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it must include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection is satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort is deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.
4. A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-08. Annual report - Notice to policy owners.

1. In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that must contain at least the following information:
 - a. For universal life policies, the report must include the following:

- (1) The beginning and end date of the current report period;
 - (2) The policy value at the end of the previous report period and at the end of the current report period;
 - (3) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense, and riders);
 - (4) The current death benefit at the end of the current report period on each life covered by the policy;
 - (5) The net cash surrender value of the policy as of the end of the current report period;
 - (6) The amount of outstanding loans, if any, as of the end of the current report period; and
 - (7) For fixed premium policies, if, assuming guaranteed interest, mortality, and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect must be included in the report; or
 - (8) For flexible premium policies, if, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect must be included in the report.
- b. For all other policies, where applicable:
- (1) Current death benefit;
 - (2) Annual contract premium;
 - (3) Current cash surrender value;
 - (4) Current dividend;
 - (5) Application of current dividend; and
 - (6) Amount of outstanding loan.
- c. Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those

years when a change has been made to nonguaranteed policy elements by the insurer.

2. If the annual report does not include an in force illustration, it must contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within thirty days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.
3. Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration must comply with the requirements of subsections 1 and 2 of section 45-04-01.1-04 and subsections 1 and 5 of section 45-04-01.1-05. No signature or other acknowledgment of receipt of this illustration shall be required.
4. If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report must contain a notice of that fact and the nature of the change prominently displayed.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-09. Annual certifications.

1. The board of directors of each insurer shall appoint one or more illustration actuaries.
2. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the national association of insurance commissioners model regulation on life insurance illustrations promulgated by the actuarial standards board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this chapter.
3. The illustration actuary shall:

- a. Be a member in good standing of the American academy of actuaries;
- b. Be familiar with the standard of practice regarding life insurance policy illustrations;
- c. Not have been found by the commissioner, following appropriate notice and hearing to have:
 - (1) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of the person's dealings as an illustration actuary;
 - (2) Been found guilty of fraudulent or dishonest practices;
 - (3) Demonstrated the person's incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
 - (4) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;
- d. Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under subdivision c;
- e. Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and
- f. Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:
 - (1) Fully allocated expenses;
 - (2) Marginal expenses; or

- (3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.
4. a. The illustration actuary shall file a certification with the board and with the commissioner:
 - (1) Annually for all policy forms for which illustrations are used; and
 - (2) Before a new policy form is illustrated.
- b. If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.
5. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of the actuary's inability to certify.
6. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:
 - a. That the illustration formats meet the requirements of this chapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and
 - b. That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subdivision f of subsection 3.
7. The annual certifications must be provided to the commissioner each year by a date determined by the insurer.
8. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

45-04-01.1-10. Effective date. This chapter applies to all life insurance policies or certificates sold on or after January 1, 1997.

History: Effective January 1, 1997.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33-02

TITLE 54
Nursing, Board of

JULY 1996

CHAPTER 54-02-07

54-02-07-01.1. Nursing practice - Grounds for discipline.

Practice inconsistent with acceptable standards of nursing practice by a licensee or registrant means behavior that may place a client or other person at risk for harm. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior indicating the individual is unfit to practice nursing, as well as any of the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, or color, ~~or~~ ~~lifestyle~~.
2. Abuse of a client verbally, physically, emotionally, or sexually.
3. Failure to appropriately supervise persons to whom nursing functions have been delegated or assigning unqualified persons to perform functions of licensed nurses.
4. Practice of nursing without sufficient knowledge, skills, or nursing judgment.
5. Performance of nursing tasks or functions in a manner inconsistent with acceptable nursing standards.
6. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of client, employee, or employer records.
7. Diversion of supplies, equipment, or drugs for personal use or unauthorized use.

8. Misuse or betrayal of a trust or confidence.
9. Exploitation of a client or client's family for financial or personal gain.

History: Effective December 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

TITLE 61
Pharmacy, Board of

JULY 1996

CHAPTER 61-02-01

61-02-01-14. Limitation on rent. Before a pharmacy permit is issued, in the case of a pharmacy leasing space, a copy of the lease agreement must be furnished to the board which must include rental terms and information. The lease rental amounts, less in-house sales and wholesale sales, may not exceed ~~ten~~ five percent of the total gross sales of the pharmacy, with the further provision that the landlord shall furnish all utilities including heat, electrical, and janitorial services, but not including phone service. The board recognizes that the lease terms and rent will depend on the type of pharmaceutical services offered, and therefore, variations for rent may be granted by the board of pharmacy.

History: Effective April 1, 1988; amended effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(7)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36

Law Implemented: NDCC 28-32-02; ~~43-15-10(7);~~ ~~43-15-10(8);~~ ~~43-15-10(9);~~ ~~43-15-10(12);~~ ~~43-15-10(14);~~ ~~43-15-34;~~ ~~43-15-35;~~ ~~43-15-36~~ 28-32-03

CHAPTER 61-02-07.1

61-02-07.1-02. Definitions.

1. "Pharmacy technician" means a person registered by the board of pharmacy who is employed by a pharmacy under the responsibility of the pharmacist-in-charge or a staff pharmacist so designated by the pharmacist-in-charge, to assist in the technical services of preparing pharmaceuticals for final dispensing by a licensed pharmacist in compliance with subsection 4 of North Dakota Century Code section 43-15-01 and subsection 16 of North Dakota Century Code section 43-15-01.
2. "Pharmacy technician in training" is a person who is enrolled in an academic experiential rotation program of North Dakota state college of science or in an on-the-job self-instructioned pharmacy technician study program under the supervision of a licensed pharmacist.
3. "Supportive personnel" means a person other than a licensed pharmacist, pharmacy intern, or pharmacy technician who may be performing duties assigned by the pharmacist under direct supervision.

History: Effective October 1, 1993; amended effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)(19)

Law Implemented: NDCC 28-32-03; ~~43-15-10(12)(14)~~

61-02-07.1-06. Tasks pharmacy technicians may not perform. The pharmacy technician may not:

1. Evaluate the patient's profile relative to the pharmaceuticals that have or will be dispensed.
2. Consult with the patient concerning the utilization of their pharmaceuticals.
3. Initially select a generic pharmaceutical, if substitution is permissible or legal.
4. Make decisions that require a pharmacist's professional education, such as interpreting and applying pharmacokinetic data and other pertinent laboratory data or therapeutic values to design safe and effective drug dosage regimens.

5. Engage in the practice of pharmacy, except as authorized by a licensed pharmacist, as permitted by North Dakota law and rules adopted by the board.

History: Effective October 1, 1993; amended effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)(19)

Law Implemented: NDCC 28-32-03; ~~43-15-10(12)(14)~~

61-02-07.1-07. Pharmacy technician registration requirements.

1. A pharmacy technician must register with the board of pharmacy on an annual basis.
2. The pharmacy technician will be assigned a registration number.
3. The board of pharmacy must provide the pharmacy technician with an annual registration card and pocket identification card.
4. The pharmacy technician certificate and annual registration card must be displayed and visible to the public in the pharmacy on--publie--view where the pharmacy technician is employed.
5. The pharmacy technician must wear a name badge while in the pharmacy which clearly identifies the person as a "pharmacy technician."
6. Pharmacy technicians shall identify themselves as pharmacy technicians on all telephone conversations while on duty in the pharmacy.
7. The northland association of pharmacy technicians shall appoint annually three of their members as an advisory committee to the board of pharmacy.
8. Every registered pharmacy technician, within fifteen days after changing address or place of employment, shall notify the board of the change. The board shall make the necessary changes in the board's records.
9. A pharmacy technician having passed the reciprocity examination of the national association of boards of pharmacy, or any other examination approved by the board, shall be granted reciprocity and shall be entitled to registration as a registered pharmacy technician in North Dakota.
10. A pharmacy technician registered by the board may use the designations "registered pharmacy technician" and "R. Ph. Tech."

11. A pharmacy technician holding a certificate of registration as a pharmacy technician in North Dakota may go on inactive status, and continue to hold a certificate of registration in North Dakota, provided that the technician on inactive status may not practice within North Dakota. A pharmacy technician on inactive status will not be required to meet the continuing education requirements of the board under chapter 61-02-07.1. In order for a pharmacy technician to change an inactive status registration to an active status of registration, the pharmacy technician must complete ten hours of approved pharmacy technician continuing education and thereafter comply with the continuing education requirements of the board.
12. In the case of loss or destruction of a certificate of registration, a duplicate can be obtained by forwarding the board an affidavit setting forth the facts.

History: Effective October 1, 1993; amended effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)(19)

Law Implemented: NDCC 28-32-03; ~~43-15-10(12)(14)~~

61-02-07.1-10. Pharmacy technician continuing education.

1. Commencing March 1997 no annual renewal of a pharmacy technician registration may be issued to a pharmacy technician until such pharmacy technician has completed at least twenty hours of approved pharmacy technician continuing education during the previous two-year period. Thereafter, each pharmacy technician shall complete at least twenty hours of approved pharmacy technician continuing education every two years as a condition of renewal of a registration as a pharmacy technician in North Dakota.
2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the end of each two-year reporting period may be used in that two-year reporting period or the following reporting period.
3. Pharmacy technicians shall maintain their own records on forms supplied by the board. The records must be maintained for a two-year period.
4. The requirements of this section do not apply to a pharmacy technician applying for a first renewal of a registration.
5. A pharmacy technician registered with the board may make application to the board for a waiver of compliance with the pharmacy technician continuing education requirements and may be granted an exemption by the board.

6. Upon request of the board, proof of compliance must be furnished to the board.
7. Approved pharmacy technician continuing education means those pharmacy technician continuing education programs approved by the board. The board shall maintain a record of approved programs including the hours of credit assigned to each program which shall be available upon request.

History: Effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)(19)

Law Implemented: NDCC 28-32-03

61-02-07.1-11. Pharmacy technician in training. A pharmacy technician in training must be designated as a pharmacy technician in training and will be allowed to practice the professional duties of a registered pharmacy technician as determined by the pharmacist-in-charge and the supervising licensed pharmacist. Upon receipt of a request to have a person designated a pharmacy technician in training from a pharmacist-in-charge, the board, if appropriate, shall send a letter of approval to the pharmacist-in-charge and the person so enrolled as a pharmacist technician in training. Registration as a pharmacy technician is not required for a period of two years.

History: Effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)(19)

Law Implemented: NDCC 28-32-03

CHAPTER 61-04-01

61-04-01-01. Return of drugs and devices prohibited. Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, reissue, or resale any drugs, prescribed medications, chemicals, poisons, or medical devices; ~~except that in:~~

1. In a hospital with a licensed pharmacy, drugs, devices, or other items may be returned to the pharmacy for disposition by a pharmacist in accordance with good professional practice.
2. In licensed nursing homes or basic care facilities where United States pharmacopeia storage requirements can be assured, pharmaceuticals (not controlled substances) dispensed in unit dose or in individually sealed doses which meet United States pharmacopeia packaging requirements may be returned to the pharmacy from which they were dispensed. The dispensing pharmacy or pharmacist is responsible to determine the suitability of the product for reuse. No product where lot number and integrity cannot be assured may be credited or reused. A redispensed pharmaceutical must be assigned an expiration date within the manufacturers original limits but not to exceed six months from the date of redispensing. No product may be redispensed more than one time.
3. This section shall not apply to the return of medical devices provided that proper sanitary procedures are used prior to the reuse, resale, or rerepent of the devices.

History: Amended effective July 1, 1996.

General Authority: NDCC ~~43-15-10(9)~~ 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 43-15-10(9) 28-32-03

STAFF COMMENT: Chapter 61-04-07 contains all new material and is not underscored so as to improve readability.

**CHAPTER 61-04-07
PHARMACY PATIENT'S BILL OF RIGHTS**

Section
61-04-07-01 Pharmacy Patient's Bill of Rights

61-04-07-01. Pharmacy patient's bill of rights. North Dakota pharmacies and pharmacists shall provide pharmaceutical care so that the patient has the following rights:

1. To professional care provided in a competent and timely manner in accordance with accepted standards of pharmacy practice.
2. To be treated with dignity, consistent with professional standards, regardless of manner of payment, race, sex, age, nationality, religion, disability, or other discriminatory factors.
3. To pharmaceutical care decisions made in the patient's best interest in cooperation with the patient's physician.
4. To have the pharmacist serve as one of the patient's advocates for appropriate drug therapy and to make reasonable efforts to recommend alternative choices in cooperation with the patient's physician.
5. To have the patient's pharmaceutical records maintained in an accurate and confidential manner and used routinely to maximize the patient's pharmaceutical care.
6. To receive health care information and to review the patient's records upon request.
7. To receive patient counseling, using the methods appropriate to the patient's physical, psychosocial, and intellectual status.
8. To have the patient's prescriptions dispensed and pharmacy services provided at a pharmacy of the patient's choice in an atmosphere that allows for confidential communication.
9. To have the patient's drug therapy monitored for safety and efficacy and to make reasonable efforts to detect and prevent drug allergies, adverse reactions, or contraindications.

10. To monitor the patient's compliance and proper drug use and to institute remedial interventions when necessary.
11. To have the pharmacy patient's bill of rights posted in a prominent place within the pharmacy readily visible to the patient.

History: Effective July 1, 1996.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)(18)

Law Implemented: NDCC 28-32-03

TITLE 75
Department of Human Services

JULY 1996

CHAPTER 75-01-03

AGENCY SYNOPSIS: A public hearing was conducted on February 7, 1996, in Bismarck, North Dakota, concerning proposed amendments to North Dakota Administrative Code chapter 75-01-03, specifically section 75-01-03-08.1, Notice of Nursing Facility's Intention to Transfer or Discharge a Resident. The rules provide guidance to nursing facilities as to lawful bases for involuntary transfers and discharges.

75-01-03-08.1. Notice of facility's intention to transfer or discharge a resident.

1. For purposes of this section:
 - a. "Discharge" means movement from a facility to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.
 - b. "Resident" includes a person who has been admitted and any legal representative of the resident.
 - c. "Transfer" means movement from a facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving institutional setting.
2. Except as provided in subsection 4, a facility shall issue a written notice of involuntary transfer or discharge, which

meets the requirements of subsection 3, at least thirty days before the date of intended transfer or discharge. The first day of that thirty-day period is the day after the date of issuance. The date of issuance is the day notice is delivered or mailed to the resident.

3. The notice provided by the facility must contain:
 - a. A statement that the facility intends to transfer or discharge the resident, as the case may be;
 - b. The reason for the transfer or discharge;
 - c. The effective date of the transfer or discharge;
 - d. The location to which the resident is to be transferred or discharged;
 - e. The specific provision of ~~section--33-07-03;1-37--that~~ authorizes subsection 7 authorizing the transfer or discharge, or the change in federal or state law that ~~requires~~ requiring the action;
 - f. A statement that the resident has the right to appeal the intended transfer or discharge to the department, and the mailing address to which an appeal must be sent;
 - g. The name, address, and telephone number of the state long term care ombudsman;
 - h. If the resident is developmentally disabled or mentally ill, the address and telephone number of the committee on protection and advocacy office that serves the area in which the resident resides;
 - i. If the medicaid program is paying for some or all of the cost of services furnished to the resident by the facility, a statement that those medicaid payments will continue until after the hearing unless:
 - (1) The sole issue at the hearing is one of state or federal law or policy and the resident is so informed in writing; or
 - (2) Some change in circumstances affects the resident's eligibility for medicaid benefits and the resident is so notified in writing.
 - j. A statement that the transfer or discharge will be delayed, if a request for fair hearing is filed before the effective date of the transfer or discharge:

- (1) In the case of a discharge for nonpayment of facility charges, at least until the hearing officer recommends a decision that the charges were due and unpaid at the time the facility issued a notice of discharge; and
 - (2) In all other cases, until the fair hearing decision is rendered.
- k. A statement that the resident may represent himself or herself at the hearing or may use legal counsel, a relative, a friend, or other spokesperson.
4. a. A facility need not provide a notice under subsection 2 if the resident:
- (1) Provides a clear written statement, signed by the resident, that the resident does not object to a proposed transfer or discharge; or
 - (2) Gives information that requires a transfer or discharge and indicates that the resident understands that a transfer or discharge will result.
- b. A facility must issue a notice that meets the requirements of subsection 3, as soon as practicable before an involuntary transfer or discharge, when:
- (1) The safety of individuals in the facility would be endangered;
 - (2) The health of individuals in the facility would be endangered;
 - (3) The transfer or discharge is appropriate because the resident's health has improved sufficiently to allow a more immediate transfer or discharge;
 - (4) An immediate transfer or discharge is required by the resident's urgent medical needs which cannot be met in the facility; or
 - (5) The resident has not resided in the facility for thirty days.
5. A resident of a facility may appeal a notice from the facility of intent to discharge or transfer the resident. A resident has appeal rights when the resident is transferred from a certified bed to a noncertified bed or from a bed in a certified facility to a bed in a facility certified as a different provider. A resident has no appeal rights when the resident is moved from one bed in a certified facility to another bed in the same certified facility. A resident has no

appeal rights if the transfer or discharge has taken place and the resident did not appeal within thirty days after the date of issuance of a notice that meets the requirements of subsection 3.

6. If a resident with appeal rights files an appeal before the effective date of the transfer or discharge, the resident shall not be transferred or discharged:
 - a. In the case of a discharge for nonpayment of facility charges, earlier than the date a hearing officer recommends a decision that the charges were due and unpaid at the time the facility issued a notice of discharge; and
 - b. In all other cases, until the fair hearing decision is rendered.
7. A facility may not discharge or transfer a resident unless:
 - a. The resident has an urgent medical need, which cannot be met in the facility;
 - b. The resident's physical condition endangers or poses a threat to the health or safety of the resident or other persons in the facility;
 - c. In cases involving a mental condition or behavioral problem, the behavior of the resident creates a serious and immediate threat to the resident or other residents or persons in the facility and all reasonable alternatives to transfer or discharge, consistent with the attending physician's orders, have been attempted and documented in the resident's medical record;
 - d. The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
 - e. The resident was accepted by the facility for the purpose of receiving specialized services and has fully benefited from those services or can no longer benefit from those services, provided that the purpose of the admission and the expected length of stay were agreed to, in writing, by or on behalf of the resident, prior to admission;
 - f. The resident's health or safety is at risk because the facility cannot reasonably accommodate the needs of the resident;
 - g. A public official with jurisdiction over matters of health or safety, in the performance of official duties, determines the health or safety of the resident is endangered by continued residence in the facility;

- h. The facility's license is revoked, suspended, or not renewed, or the facility's participation in medicare or medicaid is terminated;
- i. The facility intends to cease operations; or
- j. The resident fails to pay, or to arrange for payment of, charges based on the daily rate established under chapter 75-02-06, provided that no involuntary transfer or discharge may be based on a failure to pay charges for private rooms, bed holds in excess of fifteen consecutive hospital days or eighteen therapeutic leave days per calendar year, or special services not included in the daily rate.

History: Effective February 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

CHAPTER 75-02-01.1

AGENCY SYNOPSIS: A public hearing was conducted on February 7, 1996, in Bismarck, concerning proposed amendments to North Dakota Administrative Code chapter 75-02-01.1, Aid to Families with Dependent Children, specifically section 75-02-01.1-13, concerning Unemployment of the Principal Wage Earner - Pay After Performance. The rules clarify the eligibility requirements and avoid costly computer reprogramming. This was done by applying, as eligibility criteria, information easily gathered, and by timing the use of that information to occur consistent with already scheduled eligibility determination activity. The rules were effective as interim final rules January 1, 1996.

75-02-01.1-13. Unemployment of the principal wage earner - Pay after performance.

1. For purposes of this section, "unemployed":
 - a. "Paid employment" means employment for which the employee is paid, at or above the federal minimum hourly wage, at least once each calendar month, in lawful money of the United States or with checks drawn on banks convenient to the place of employment.
 - b. "Unemployed parent" means a principal wage earner who meets the requirements of subdivisions a through g paragraphs 1 through 7.
- a- (1) A principal wage earner must verify that he or she was employed less than one hundred hours, including hours when holiday pay or sick pay was received, in any month necessary to determine benefits under this section.
- b- (2) A principal wage earner who is not self-employed must provide an employer's statement of any hours worked by the principal wage earner.
- e- (3) A principal wage earner who is self-employed must:
 - {1} (a) Provide, as verification, a reliable written statement made by a disinterested third party who is not an employee of the principal wage earner or a member of the principal wage earner's family;
 - {2} (b) Verify that one-twelfth of the annual net profit, as reported on the most recent federal income tax return filed by the principal wage earner, when divided by the federal hourly

minimum wage, produces a result of less than one hundred; or

(3) (c) Verify that 1.08 times the principal wage earner's net income from self-employment, as calculated under section 75-02-01.1-41, when divided by the federal hourly minimum wage, produces a result of less than one hundred.

d- (4) A principal wage earner who is a seasonal worker must verify that employment of less than one hundred hours in a relevant month was not due to weather conditions when the principal wage earner would otherwise have had work available.

e- (5) A principal wage earner must verify that the principal wage earner is not unemployed by reason of conduct or circumstances that result or would result in disqualification for unemployment compensation.

f- (6) Upon application, a principal wage earner must report the actual number of hours worked in the calendar month immediately preceding the month of application and must estimate the number of hours the principal wage earner expects to work in the month of application.

g- (7) Once determined eligible under this section, a principal wage earner must, on or before the fifth working day of each month, report the actual number of hours worked in the calendar month immediately preceding the month the report is made, must verify the hours worked, and must estimate the number of hours the principal wage earner expects to work in the month immediately following the month the report is made.

c. "Work", except as the term is used in subsection 5, means on-the-job training, work supplementation, alternative work experience, community work experience, or paid employment or any combination of those activities.

2. Benefits under this section are furnished on a calendar month basis.

3. Unemployed parent benefits under the aid to families with dependent children program are available only if all aspects of eligibility required under this chapter are established. Deprivation may be established for unemployed parent benefits by a showing, in the manner required by this section, that the principal wage earner is unemployed. Eligibility for unemployed parent benefits depends upon continued unemployment. Unemployed parent benefits are provided with a

goal of encouraging families to become self-supporting as rapidly as possible.

4. Unemployed parent benefits are available only if both parents are living in the household. The parents are not required to be married to each other, but at least one child in the household must be the child of both parents. The parentage of that child must be adjudicated, established by marriage, or acknowledged by the father.
5. The principal wage earner must have had a prior connection with the labor force verified under either subdivision a or b.
 - a. Within a one-year period prior to the date of eligibility, the principal wage earner must have received or been qualified for job insurance benefits under the laws of the state or of the United States. For purposes of this subdivision, railroad unemployment benefits are job insurance benefits. A principal wage earner is treated as qualified for job insurance benefits if the principal wage earner would have been eligible to receive benefits upon application or if the principal wage earner performed work which, had it been covered, would, together with any covered work, have made the principal wage earner eligible for job insurance benefits. To determine if a principal wage earner was qualified for job insurance benefits, for purposes of this subdivision, the total amount of earnings during the base period must be established. The base period is the first four quarters in the last five completed quarters prior to the quarter of application. The principal wage earner must have had earnings in at least two quarters in the base period; total base period earnings must be at least one and one-half times the highest quarter earnings in the base period; and base period earnings must be at least two thousand seven hundred ninety-five dollars.
 - b. The principal wage earner must have had six or more quarters of work within any thirteen calendar quarter period ending within one year prior to the quarter of application for benefits. A "quarter of work" means a period of three consecutive calendar months ending March thirty-first, June thirtieth, September thirtieth, or December thirty-first in which the principal wage earner:
 - (1) Received earned income of not less than fifty dollars, including work study income;
 - (2) Participated in a community work experience program, work incentive program, or job opportunities and basic skills program, but not a tribal work experience program; or

- (3) Attended, full time, an elementary school, a secondary school, or a vocational or training course designed to prepare the individual for gainful employment, or participated in an educational or training program under the Job Training Partnership Act of 1982, provided that no more than four quarters of activity under this paragraph may be treated as a quarter of work.
6. The principal wage earner, once designated, remains the principal wage earner for each month the household receives benefits under the program for unemployed parents, or has such benefits suspended, or does not receive benefits solely because it has already received benefits for six months in a twelve-month period. If the case is closed and the household is without such benefits for at least one full calendar month, a new application must be made and a new designation of the principal wage earner is required.
7. In determining which parent is the principal wage earner, the county agency shall:
 - a. Consider the verified earnings of each parent;
 - b. Use the best information available to designate the principal wage earner if reliable verification of earnings cannot be secured; and
 - c. Designate the principal wage earner if both parents earned identical amounts of income or earned no income.
8. If the principal wage earner was employed one hundred hours or more in the calendar month immediately preceding the month of application, there is no eligibility in the month of application.
9. If the principal wage earner was employed less than one hundred hours in the calendar month immediately preceding the month of application, estimates that the principal wage earner expects to work less than one hundred hours in the month of application, and all other conditions of eligibility are met, eligibility may begin as early as the date of application. ~~Payment--of--benefits,--except--as--provided--under--subsection--18, may--be--made--no--earlier--than--after--verification--that--the applicable--requirements--of--subsection--16--or--17--are--met.~~
10. If the principal wage earner was employed one hundred hours or more in the month immediately preceding the month of application, is employed less than one hundred hours in the month of application, estimates that the principal wage earner expects to work less than one hundred hours in the month immediately following the month of application, and all other conditions of eligibility are met, eligibility may begin as

early as the first day of the month immediately following the month of application. ~~Payment of benefits, except as provided under subsection 18, may be made no earlier than after verification that the applicable requirements of subsection 16 or 17 are met.~~

11. Once determined eligible under this section, if a principal wage earner reports working one hundred hours or more in the month immediately preceding the month the report is made, and estimates the principal wage earner expects to work one hundred hours or more in the month immediately following the month the report is made, eligibility under this section ends at the end of the month the report is made.
12. Eligibility for unemployed parent benefits may be established for no more than six months in any twelve-month period. The six months of potential eligibility need not be consecutive. For purposes of applying this limitation, a month is a benefit month if:
 - a. Eligibility is established at any time during that month;
 - b. The household actually receives benefits even though the family is totally ineligible;
 - c. The household is eligible for benefits of less than ten dollars; or
 - d. The household is eligible but receives benefits in excess of those for which it was eligible.
13. ~~The principal wage earner~~ Neither parent may not, without good cause, refuse a bona fide offer of employment or training for employment in the calendar month immediately preceding authorization of benefits under this chapter.
 - b. If an offer of employment or training was made through job service North Dakota, job service North Dakota shall determine if a bona fide offer was made and if there was good cause for refusing it.
 - c. If an offer of employment or training was made other than through job service North Dakota, the county agency shall determine if a bona fide offer was made and if there was good cause for refusing it, considering the following factors:
 - (1) Whether there was a definite offer of employment at wages meeting any applicable minimum wage requirements and that are customary for such work in the community;

- (2) Whether there were any questions as to the physical or mental ability of the principal wage earner to engage in the offered employment;
 - (3) Whether there were any questions of the working conditions such as risks to health, safety, or lack of workers' compensation protection;
 - (4) Whether the ~~principal-wage-earner~~ parent had a way to get to or from the particular job, including evidence the parent reasonably attempted to arrange for transportation;
 - (5) Whether, as a condition of being employed, the ~~principal-wage-earner~~ parent would be required to join a company union, or to resign or refrain from any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization;
 - (6) Whether the position offered is vacant directly due to a strike, lockout, or other labor dispute;
 - (7) Whether the work is at an unreasonable distance from the ~~principal--wage--earner's~~ parent's residence, considering--the--type--of--work--the--principal--wage earner--has--been--accustomed--to--doing,--and--travel--to the--place--involves--expenses--substantially--greater than--that--required--for--the--principal--wage--earner's former--work,--unless--a--travel--expense--allowance--is provided one-way traveltime of one hour or less may not be treated as an unreasonable distance; and
 - (8) Whether the rate of pay, hours, or other conditions of the work offered are substantially less favorable to the ~~individual~~ parent than those prevailing for similar work in the locality.
- d. If it is determined that a bona fide offer of employment or training was refused by a ~~principal-wage-earner~~ parent without good cause,;
- (1) In the case of a recipient assistance unit, the entire assistance unit is ineligible for the calendar month beginning after the month in which the offer was-refused determination was made; and
 - (2) In the case of an applicant assistance unit, the entire unit is ineligible for the calendar month of application and the following month.
14. ~~The--principal--wage--earner~~ Each parent must accept any unemployment compensation benefits to which the ~~principal-wage~~

earner parent is entitled. Any principal-wage-earner Each parent must provide verification, from job service North Dakota, as to whether the principal-wage-earner parent is qualified for unemployment compensation benefits; and, if qualified, must make application for unemployment compensation benefits. If a principal-wage-earner parent who qualifies for unemployment compensation benefits fails to apply for those benefits, the needs of that principal-wage-earner parent must be deleted from the amount of benefits otherwise provided to the assistance unit under this chapter.

15. Pay--after--performance--requires--the--principal--wage--earner--to--complete--assigned--activities--prior--to--payment--of--benefits--under--this--chapter.--The--assigned--activities--may--vary--in--each--of--the--potential--six--months--of--eligibility--in--a--twelve--month--period.--The--six--months--of--potential--eligibility--need--not--be--consecutive.--Within--the--twelve--month--period,--the--activities--of--the--potential--six--eligible--months--must--be--completed--in--order.--The--first--month--of--a--twelve--month--period--is--the--first--month--that--is--a--benefit--month. No assistance unit may be found eligible under this section unless, within seven working days after the county agency initiates a referral to the job opportunities and basic skills program, both parent members of that unit:
 - a. Verify a current application for employment is on file at an office of job service North Dakota;
 - b. Verify application for any unemployment benefits that may be due either parent;
 - c. Sign and return to the county agency a statement acknowledging the parent's duties and responsibilities; and
 - d. Verify beginning and continuing a job search satisfactory to that parent's job opportunities and basic skills program coordinator.
16. If--a--principal--wage--earner--is--a--member--of--an--assistance--unit--that--has--not--previously--received--benefits--under--this--section,--except--as--provided--in--subsection--18:
 - a. If--application--is--made--on--or--before--the--twenty--fourth--day--of--a--month,--before--benefits--are--issued--in--the--first--month--the--principal--wage--earner--shall--register--with--job--service--North--Dakota.
 - b. If--application--is--made--on--or--after--the--twenty--fifth--of--the--first--month,--the--pro--rata--benefit--for--the--days--remaining--in--that--month--after--the--date--of--application,--may--be--issued--in--that--month.--Before--benefits--are--issued--in--the--second--month--the--principal--wage--earner--shall--register--with--job

service--North--Dakota--and--comply--with--the--provisions
otherwise-applicable-to-the-second-month.

e.--Before--benefits--are--issued--in--the--second--month--the
principal-wage-earner-shall-participate-in--a--job--search
assistance-workshop-or-comply-with-requirements-applicable
in-the-third-month.

d.--Before--benefits--are--issued--in--the--third--month--the
principal-wage-earner-shall-participate--in--a--designated
work--program--during--that--month.--If-the-principal-wage
earner-participates-in-a-designated-work-program-for--less
than--sixty-four--hours,--benefits-must-be-reduced-to-that
proportion-of-benefits-the-assistance-unit-would-otherwise
receive--that--is--the--same--proportion--actual--hours-of
participation-is-of-sixty-four-hours.

e.--Before-benefits-are-issued-in-the-fourth,-fifth,-and-sixth
months,-the-principal-wage-earner-shall-participate--in--a
designated--work--program--during-each-such-month.--If-the
principal-wage-earner-participates-in--a--designated--work
program--for--less--than-one-hundred-twenty-eight-hours-in
each-such-month,-benefits-for-that-month-must--be--reduced
to--that--proportion-of-benefits-the-assistance-unit-would
otherwise-receive-that-is-the-same-proportion-actual-hours
of-participation-is-of-one-hundred-twenty-eight-hours.

a. Except as provided in subdivision b, both parents in a
recipient assistance unit must comply with this
subsection.

(1) A parent engaged in paid employment at least
thirty-two hours per week need not engage in job
search or unpaid work.

(2) A parent engaged in paid employment of at least
twenty-four hours per week but less than thirty-two
hours per week must engage in at least eight hours of
job search per week.

(3) A parent engaged in paid employment of less than
twenty-four hours per week must engage in at least
eight hours of job search per week, at least eight
hours of unpaid work per week, and a total of at
least forty hours per week of a combination of paid
employment, job search, and unpaid work.

(4) A parent not engaged in paid employment must engage
in at least eight hours of job search per week and at
least thirty-two hours of unpaid work per week.

(5) A parent under age twenty-five who has neither
completed high school nor earned a general

equivalency diploma, and who is making satisfactory progress in either of those educational activities, may substitute that progress for up to thirty-two hours of unpaid work per week, but must engage in at least eight hours of job search per week.

b. If one parent complies fully with subdivision a, the second parent shall engage in unpaid work, job search, and educational activities only at times necessary child care is made available at the expense of the department and is not required to engage in those activities for more than twenty hours per week.

17. ~~If the principal wage earner is a member of an assistance unit that has previously received benefits under this section, except as provided in subsection 18:~~

~~a. -- If application is made on or before the twenty-fourth day of the month, before benefits are issued in the first month the principal wage earner shall register with job service North Dakota and shall participate in a designated work program during that month. -- If the principal wage earner participates in a designated work program for less than sixty-four hours, benefits must be reduced to that proportion of the benefits the assistance unit would otherwise receive that is the same proportion actual hours of participation is of sixty-four hours or the pro-rata benefit for the days remaining in the month, upon the date of application, whichever is less.~~

~~b. -- If application is made on or after the twenty-fifth day of the first month, the pro-rata benefit for the days remaining in that month, after the date of application, may be issued in that month. -- Before benefits may be issued in the second month, the principal wage earner shall register with job service North Dakota and comply with the provisions otherwise applicable to the second month.~~

~~c. -- Before benefits are issued in the second through sixth months, the principal wage earner shall participate in a designated work program during each such month. -- If the principal wage earner participates in a designated work program for less than one hundred twenty-eight hours in each such month, benefits for that month must be reduced to that proportion of benefits the assistance unit would otherwise receive that is the same proportion actual hours of participation is of one hundred twenty-eight hours.~~

a. No benefits under this section may be provided for the calendar month of application until the assistance unit complies with subsection 15.

b. No benefits under this section may be provided for the calendar month immediately after the month of application unless:

(1) Benefits are provided in the month of application;

(2) The assistance unit continues the job search; and

(3) For any period, beginning seven calendar days after the day notice of approval is issued and ending on the nineteenth day of that month, the assistance unit complies with subsection 16.

c. No benefits under this section may be provided for the third and subsequent calendar months after the month of application unless:

(1) Benefits were provided in the month of application and the month immediately following the month of application; and

(2) For a period, beginning on the twentieth day of the month two months before the benefit month and ending on the nineteenth day of the month before the benefit month, the assistance unit complies with subsection 16.

18. ~~Once the principal wage earner commences performance in any month, benefits in the amount of ten dollars may be issued immediately, and any additional benefits due in that benefit month may be issued only as provided under subsections 16 and 17.~~

19. ~~For purposes of subsections 16 and 17, "benefits the assistance unit would otherwise receive" includes only those amounts provided for basic requirements items.~~

20. A principal wage earner parent who is required to perform an activity shall verify either the performance of the required activity or good cause for failure to perform.

21- 19. Good cause for failure to perform the required activity exists only if good cause would exist for failure or refusal to participate in the job opportunities and basic skills program, except:

a. If the principal wage earner parent is too ill to participate or refuses major medical care, the other parent in the household shall ~~also show good cause for failure to perform; and~~

b. Good cause may not be based on a claim that the designated work program assignment does not meet appropriate work or training criteria; and

c. A claim of good cause must be such as would preclude any reasonable employee, of ordinary ability and responsibility, from working, considering the totality of circumstances, and particularly considering the efforts of the parent to overcome the obstacle to participation.

22. 20. If the principal wage earner fails to perform activities required under this section, shows good cause for that failure to perform, or establishes an exemption under subdivisions b through k of subsection 1 of section 75-02-01.1-70, the second parent is thereafter treated as the principal wage earner must perform the required activities, subject to all provisions of this section, and may not show good cause or establish an exemption.

23. 21. A household is entitled to adequate notice of a determination that a ~~principal wage earner~~ parent failed without good cause to perform activities required under this section. The notice must inform the household that it may be reinstated ~~to the payment amount made in the month immediately past~~ if an appeal of the decision described in the notice is made within ten days of the date of the notice.

22. Household members subject to this section who are native Americans residing in the service area of a tribal job opportunities and basic skills program, and who are, or upon application would be, eligible for services through that program, must verify participation in all activities required under this section that are made available through that program.

History: Effective March 1, 1995; amended effective January 1, 1996.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

CHAPTER 75-02-02

AGENCY SYNOPSIS: A public hearing was conducted on February 7, 1996, in Bismarck, North Dakota, concerning proposed amendments to North Dakota Administrative Code chapter 75-02-02, Medical Services, including an amendment to subdivision f of subsection 2 of section 75-02-02-08, Amount, Duration, and Scope of Medical Assistance, concerning transportation services limitations, and new sections 75-02-02-13.1 and 75-02-02-13.2, concerning travel expenses. The amendments clarify transportation services limitations.

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 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.
- l. 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, 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" 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 is available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. The department shall make available to all practitioners dispensing eyeglass frames, and to anyone else who may make inquiry, information concerning established limits. No coverage exists, and no payment will be made, for eyeglass frames which exceed the limits.
 - e. Coverage and payment for home health care services and private duty nursing services must be limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing home in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include, but are not limited to, home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services. This limit may be exceeded, in unusual and complex cases, if the provider has submitted a prior treatment authorization request describing each medical and remedial service to be received by the recipient, stating the cost of that service, describing the medical necessity for the provision of the home health care services or private duty nursing services, and explaining why less costly

alternative treatment will not afford necessary medical care; and has had the request approved.

f. Coverage and payment for the following transportation services is limited to:

(1) Twenty cents per mile for travel in a private motor vehicle;

(2) Seventeen dollars per day for meals en route to, while receiving medical care, and while returning from a medical resource, for the person receiving medical care, and where medically necessary, an attendant; provided that days during which meals are provided by the medical resource are not counted; and

(3) Thirty-five dollars per night, in state, and fifty dollars per night, out of state, for lodging en route to, while receiving medical care, and while returning from a medical resource, for the person receiving medical care, and where medically necessary, an attendant; provided that nights during which lodging is provided by the medical resource are not counted in accordance with sections 75-02-02-13.1 and 75-02-02-13.2.

g. Coverage and payment for physician's services furnished in the physician's office are subject to a copayment of two dollars for each office visit unless the medicaid recipient receiving the service:

(1) Lives in a nursing facility, intermediate care facility for the mentally retarded, the state hospital, or the Anne Carlsen school-hospital;

(2) Receives swing bed services in a hospital;

(3) Has not reached the age of twenty-one years;

(4) Is pregnant;

(5) Is entitled to have a portion of the cost of the visit paid for by medicare;

(6) Requires emergency services; or

(7) Receives family planning services during the visit.

h. Coverage will not be extended and payment will not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.

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.
6. a. Effective January 1, 1994, and for so long thereafter as the single state agency may have in effect a waiver (issued pursuant to 42 U.S.C. 1396n(b)(1)) of requirements imposed pursuant to 42 U.S.C. chapter 7, subchapter XIX, no payment may be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:
 - (1) Who are required by this subsection to select, or have selected on their behalf, a primary care physician, but who have not selected, or have not had selected on their behalf, a primary care physician; or
 - (2) By a provider who is not the primary care physician selected by or on behalf of the recipient or who has not received a referral of such a recipient from the primary care physician.
- b. A primary care physician must be selected by or on behalf of the members of a medical assistance unit which includes:

- (1) Persons who are receiving cash assistance payments through aid to families with dependent children.
- (2) Persons who are deemed to be recipients of aid to families with dependent children, including:
 - (a) Persons denied an aid to families with dependent children payment solely because the amount would be less than ten dollars;
 - (b) Persons whose aid to families with dependent children payments are reduced to zero by reason of recovery of overpayment of aid to families with dependent children funds; and
 - (c) Families who were receiving aid to families with dependent children cash assistance payments in at least three of the six months immediately preceding the month in which they became ineligible as a result (wholly or partly) of the collection or increased collection of child or spousal support and are deemed to be recipients of aid to families with dependent children, and continue eligible for medicaid for four calendar months following the month for which the final cash payment was made.
- (3) Families that received aid to families with dependent children payments in at least three of the six months immediately preceding the month in which the family became ineligible for aid to families with dependent children solely because of increased hours of, or income from, employment of the caretaker relative; or which became ineligible for aid to families with dependent children solely because a member of the family lost one of the time-limited aid to families with dependent children earned income disregards (the thirty dollar earned income disregard and the disregard of one-third of earned income).
- (4) Pregnant women whose pregnancy has been medically verified and who would be eligible for an aid to families with dependent children cash payment on the basis of the income and asset requirements of the state-approved aid to families with dependent children plan.
- (5) Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth and for the remaining days of the month in which the sixtieth day falls.

- (6) Persons who are members of families who would be eligible for aid to families with dependent children if that program did not limit, under 42 U.S.C. 607(b)(2)(B)(i), the number of months with respect to which a family receives such aid.
- (7) All individuals under age twenty-one who are not receiving aid to families with dependent children, but whose income and assets are at or below the aid to families with dependent children program limits.
- (8) Eligible caretaker relatives and individuals under age twenty-one in aid to families with dependent children families who do not meet financial or certain technical aid to families with dependent children requirements (i.e., work requirements) for a cash payment, but meet medically needy income and asset standards.
- (9) All individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy, including children in stepparent families who are ineligible for aid to families with dependent children, but not including children in foster care.
- (10) Pregnant women whose pregnancy has been medically verified and who, except for income and assets, would be eligible as categorically needy.
- (11) Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility.
- (12) Eligible pregnant women who applied for medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible, as though pregnant, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
- (13) Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.
- (14) Eligible pregnant women who applied for medicaid during pregnancy who continue to be eligible, as though pregnant, for sixty days after the day each

pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.

- (15) Children under the age of six who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.
 - (16) Children, age six or older, born after September 30, 1983, who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level.
- c. Physicians practicing in the following specialties, practices, or locations may be selected as primary care physicians:
- (1) Family practice;
 - (2) Internal medicine;
 - (3) Obstetrics;
 - (4) Pediatrics;
 - (5) Osteopathy;
 - (6) General practice;
 - (7) Physicians employed at rural health clinics;
 - (8) Physicians employed at federally qualified health centers; and
 - (9) Physicians employed at Indian health clinics.
- d. A recipient identified in subdivision b need not select, or have selected on the recipient's behalf, a primary care physician if:
- (1) Aged, blind, or disabled;
 - (2) The period for which benefits are sought is prior to the date of application;
 - (3) Despite diligent effort, the recipient is unable to find a physician willing to act as primary care physician;
 - (4) Receiving foster care or subsidized adoption benefits; or

(5) Receiving home and community-based services.

e. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care physician:

(1) Certified family nurse practitioner services;

(2) Certified pediatric nurse practitioner services;

(3) Early and periodic screening of recipients under twenty-one years of age;

(4) Family planning services;

(5) Certified nurse midwife services;

(6) Podiatric services;

(7) Optometric services;

(8) Chiropractic services;

(9) Clinic services;

(10) Dental services;

(11) Intermediate care facility services for the mentally retarded;

(12) Emergency services;

(13) Transportation services;

(14) Case management services;

(15) Home and community-based services;

(16) Nursing facility services;

(17) Prescribed drugs;

(18) Psychiatric services;

(19) Ophthalmic services;

(20) Obstetrical services; and

(21) Psychological services.

f. A primary care physician must be selected for each recipient.

- g. Primary care physicians may not be changed more often than once every six months without good cause. Good cause for changing primary care physicians less than six months after a previous selection of a primary care physician exists if:
- (1) The recipient relocates;
 - (2) Significant changes in the recipient's health require the selection of a primary care physician with a different specialty;
 - (3) The primary care physician relocates or is reassigned;
 - (4) The selected physician refuses to act as a primary care physician or refuses to continue to act as a primary care physician; or
 - (5) The department, or its agents, determine, in the exercise of sound discretion, that a change of primary care physician is necessary.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; July 1, 1996.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 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

75-02-02-13.1. Travel expenses for medical purposes -
Limitations.

1. For purposes of this section:

- a. "County agency" means the county social service board.
- b. "Department" means the department of human services.
- c. "Family member" means spouse, sibling, parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, aunt, uncle, niece, or nephew, whether by half or whole blood, and whether by birth, marriage, or adoption.
- d. "Recipient" means an individual approved as eligible for medical assistance.
- e. "Travel expenses" means fares, mileage, meals, lodging, and driver and attendant care.

2. General requirements.

- a. A transportation service provider shall be enrolled as a provider in the medical assistance program and may be an individual, taxi, bus, or airline service or other commercial form of transportation.
- b. The county agency may determine the most efficient, economical, and appropriate means of travel to meet the medical needs of the recipient. The county agency may authorize travel and issue the necessary billing forms.
- c. The cost of travel provided by a parent, spouse, or any other member of the recipient's medical assistance unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, or any other member of the recipient's medical assistance unit may be paid as an enrolled provider for transportation to that recipient.
- d. Travel services may be provided by the county agency as an administrative activity.
- e. Emergency transport by ambulance is a covered service.
- f. Nonemergency transport by ambulance is a covered service only when medically necessary and ordered by the attending physician.
- g. A recipient may choose to obtain medical services outside the recipient's community. If similar medical services are available within the community and, without a referral from a primary physician the recipient chooses to seek medical services elsewhere, travel expenses are not covered services and are the responsibility of the recipient.

3. Out-of-state travel expenses. Travel expenses for nonemergency out-of-state medical services, including followup visits, may be compensated only if the out-of-state medical services are first approved by the department under section 75-02-02-13 or if prior approval is not required under that section.

4. Limitations.

- a. Private vehicle mileage compensation is limited to an amount set by the department no less than twenty cents per mile. This limit applies even if more than one recipient is transported at the same time. Mileage is determined by map miles from the residence or community of the recipient to the medical facility. When necessary to ensure volunteer drivers continue to provide transportation

services to a recipient, the county agency may authorize payment for additional mileage. Private vehicle mileage may be billed to medical assistance only upon completion of the service.

- b. Meals compensation is allowed only when medical services or travel arrangements require a recipient to stay overnight. Compensation is limited to an amount set by the department no less than three dollars and fifty cents for breakfast, five dollars for lunch, and eight dollars and fifty cents for dinner.
- c. Lodging expense is allowed only when medical services or travel arrangements require a recipient to stay overnight. Lodging compensation is limited to an amount set by the department, provided the department may set no limit lower than thirty-five dollars per night, plus taxes, for in-state travel and fifty dollars per night, plus taxes, for out-of-state travel. Lodging receipts must be provided when lodging is not billed directly by an enrolled lodging provider. Enrolled lodging providers shall bill medicaid directly.
- d. Travel expenses may be authorized for a driver. No travel expenses may be authorized for an attendant unless the referring physician determines an attendant is necessary for the physical or medical needs of the recipient. Travel expenses may not be authorized for both a driver and an attendant unless the referring physician determines that one individual cannot function both as driver and attendant. No travel expenses may be allowed for a driver or an attendant while the recipient is a patient in a medical facility unless it is more economical for the driver or attendant to remain in the service area.
- e. Travel expenses may be authorized for one parent to travel with a child who is under eighteen years of age. No additional travel expenses may be authorized for another driver, attendant, or parent unless the referring physician determines that person's presence is necessary for the physical or medical needs of the child.
- f. Compensation for attendant services, provided by an attendant who is not a family member, may be allowed at a rate determined by the department.

History: Effective July 1, 1996.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-13.2. Travel expenses for medical purposes - Institutionalized individuals - Limitations.

1. For purposes of this section:
 - a. "Long-term care facility" means a nursing facility, intermediate care facility for the mentally retarded, or swing-bed facility; and
 - b. "Medical center city" means Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and includes any city that shares a common boundary with any of those cities.
2. A long-term care facility may not charge a resident for the cost of travel expenses for services provided by the facility. Except as provided in subsection 3, a long-term care facility shall provide transportation to and from any provider of necessary medical services located within, or at no greater distance than the distance to, the nearest medical center city. Distance must be calculated by road miles.
3. A long-term care facility need not provide either nonemergency transport by ambulance when medically necessary and ordered by the attending physician or emergency transport by ambulance.
4. A service provider that is paid a rate, determined by the department on a cost basis that includes transportation service expenses, however denominated, may not be compensated as a transportation service provider for transportation services provided to an individual residing in the provider's facility. The following service providers may not be so compensated:
 - a. Accredited residential treatment centers;
 - b. Basic care facilities;
 - c. Congregate care facilities serving individuals with developmental disabilities;
 - d. Group homes serving children in foster care;
 - e. Intermediate care facilities for the mentally retarded;
 - f. Minimally supervised living arrangement facilities serving individuals with developmental disabilities;
 - g. Nursing facilities;
 - h. Residential child care facilities;
 - i. Residential treatment centers for children;
 - j. Swing-bed facilities; and

k. Transitional community living facilities serving individuals with developmental disabilities.

5. If, under the circumstances, a long-term care facility is not required to transport a resident, and the facility does not actually transport the resident, the availability of transportation services and payment of travel expenses is governed by section 75-02-02-13.1.

History: Effective July 1, 1996.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04

CHAPTER 76-02-06

75-02-06-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's length transaction. It does not include:
 - a. A stock purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfers for nominal or no consideration;
 - e. A merger of two or more related organizations;
 - f. A change in the legal form of doing business;
 - g. The addition or deletion of a partner, owner, or shareholder; or
 - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.

7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
9. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
10. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
11. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
12. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
13. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
14. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
15. "Department" means the department of human services.
16. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
17. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
18. "Depreciation guidelines" means the American hospital association's guidelines as published by American Hospital Publishing, Inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1993 edition.

19. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
20. "Direct care costs" means the cost category for allowable nursing and therapy costs.
21. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
22. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
23. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
24. "Established rate" means the rate paid for services.
25. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for the mentally retarded.
26. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
27. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.
28. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
29. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
30. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
31. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement

benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.

32. "Highest market driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
33. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
34. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
35. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.
36. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient.
37. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
38. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
39. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, intermediate care facility for the mentally retarded, or basic care facility.
40. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
41. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
42. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence

decisions made by the legislative council, and is required to register as a lobbyist.

43. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
44. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
45. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
46. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
47. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
48. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.
49. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare.
50. "Private room" means a room equipped for use by only one resident.
51. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
52. "Provider" means the organization or individual who has executed a provider agreement with the department.
53. "Rate year" means the calendar year from January first through December thirty-first.

54. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
55. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
56. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
57. "Resident" means a person who has been admitted to the facility, but not discharged.
58. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
59. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
60. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
61. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
62. "Standardized resident day" means a resident day times the classification weight for the resident.

63. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, an intermediate care facility for the mentally retarded, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
64. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
65. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-07. Related organization.

1. Costs Except as provided in subsection 3, costs applicable to services, facilities, and supplies furnished to a provider by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. The provider shall identify the related organizations and costs in the cost report.
2. The relationship between a provider and a related organization at the time a transaction between the two parties occurs must govern the treatment of cost regardless of subsequent events that may change the relationship between the parties.
3. In the case of a facility acquired through purchase of shares, interest and depreciation expense are treated in the same manner as if the capital assets of the acquired corporation were acquired as an ongoing operation by the acquiring entity on the day the secretary of state issues a certificate of dissolution of the acquired corporation if organized in North Dakota, or on the day the acquired corporation is irrevocably dissolved if organized other than in North Dakota, provided the transaction has all of the following characteristics:
 - a. The facility was owned and operated by the acquired corporation;

- b. The acquired corporation is irrevocably dissolved, and all of its capital assets become the property of the acquiring entity, within one year after the first day on which any ownership interest in the acquired corporation was acquired by the acquiring entity; and
- c. Neither the acquiring entity nor any related organization of the acquiring entity has had any ownership interest in the acquired corporation, or any ownership interest in any related organization of the acquired corporation, for at least ten years prior to the day the acquiring entity, or a related organization of the acquiring entity, first acquired any ownership interest in the acquired corporation.
4. For purposes of subsection 3, "acquiring entity" means the entity that, upon dissolution of the acquired corporation, owns all the capital assets formerly owned by the acquired corporation.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; January 1, 1996; July 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12.1. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of resident care facilities and activities. These costs are not allowed in computing the rates. Nonallowable costs include:

1. Political contributions;
2. Salaries or expenses of a lobbyist;
3. Advertising designed to encourage potential residents to select a particular facility;
4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;
5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-06-02.5;
6. Costs incurred for activities directly related to influencing employees with respect to unionization;
7. Cost of memberships in sports, health, fraternal, or social clubs or organizations, such as elks, country clubs, knights of columbus;

8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies (including all dues unless an allocation of dues to such costs is provided);
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, or kiwanis, in excess of one thousand five hundred dollars per cost reporting period;
10. Home office costs not otherwise allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockholder and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with a transaction described in subsection 3 of section 75-02-06-07; and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care;
16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility;
17. Costs incurred by the provider's subcontractors, or by the lessor of property that the provider leases, that are an

element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 18, 1984;

18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;
19. Depreciation expense for facility assets not related to resident care;
20. Nonnursing facility operations and associated administration costs;
21. Direct costs or any amount claimed to medicare for medicare utilization review costs;
22. All costs for services paid directly by the department to an outside provider, such as prescription drugs;
23. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:
 - a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;
 - b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and
 - c. The facility documents all costs associated with a vehicle not exclusively used by the facility;
24. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;
25. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;
26. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;
27. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;

28. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that benefit all eligible employees;
29. Employment benefits associated with salary costs not includable in a rate set under this chapter.
30. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;
31. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;
32. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;
33. The following taxes:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
 - b. State or local income and excess profit taxes;
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
 - d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;
 - e. Taxes on property not used in the provision of covered services;
 - f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider;
 - g. Self-employment (FICA) taxes applicable to persons including individual proprietors, partners, members of a joint venture;
34. The unvested portion of a facility's accrual for sick or annual leave;

35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds;
36. Hair care, other than routine hair care, furnished by the facility;
37. The cost of education unless:
 - a. The education was provided by an accredited academic or technical educational facility;
 - b. The expenses were for materials, books, or tuition;
 - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility, and is in that position; and
 - d. The facility claims the cost of the education at a rate that does not exceed one dollar per hour of work performed by the employee in the position for which the employee received education at the facility's expense, provided the amount claimed per employee may not exceed two thousand dollars per year, or an aggregate of eight thousand dollars, and in any event may not exceed the cost to the facility of the employee's education.
38. Interest expense on the portion of operating loans equal to nonallowable costs incurred for the current and prior reporting periods;
39. Increased lease costs of a facility, unless:
 - a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
 - b. The increased costs related to the ownership are charged to the lessee; and
 - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;
40. At the election of the provider, the direct and indirect costs of providing therapy services to nonnursing facility residents or medicare part B therapy services, including purchase of service fees and operating or property costs related to providing therapy services.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

**CHAPTER 75-02-07
PROVIDER REIMBURSEMENT - BASIC CARE FACILITIES**

[Repealed effective July 1, 1996]

AGENCY SYNOPSIS: A public hearing was conducted on February 7, 1996, in Bismarck, concerning the proposed repeal of North Dakota Administrative Code chapter 75-02-07, Provider Reimbursement - Basic Care Facilities, and proposed new North Dakota Administrative Code chapter 75-02-07.1, Ratesetting for Basic Care Facilities. The proposed new chapter conforms ratesetting practices to those applied in the similar nursing facilities (insofar as is practical). The proposed new chapter is also intended to simplify transition of basic care facilities to a ratesetting methodology to be established effective July 1, 1997, as required by North Dakota Century Code section 50-06-14.3.

STAFF COMMENT: Chapter 75-02-07.1 contains all new material and is not underscored so as to improve readability.

**CHAPTER 75-02-07.1
RATESETTING FOR BASIC CARE FACILITIES**

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75-02-07.1-30	Resident Personal Funds

75-02-07.1-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.
6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.
7. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's length transaction. It does not include:
 - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 4 of section 75-02-07.1-13;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfer for nominal or no consideration;
 - e. A change in the legal form of doing business;
 - f. The addition or deletion of a partner, owner, or shareholder; or
 - g. A sale, merger, reorganization, or any other transfer of interest between related organizations.

8. "Building" means the physical plant, including building components and building services equipment, licensed as a facility and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings if used directly for resident care.
9. "Capital assets" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
10. "Chain organization" means a group of two or more basic care or health care facilities owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to basic care or health care.
11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
12. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.
14. "Cost center" means a division, department, or subdivision thereof, group of services or employees, or both, or any unit or type of activity into which functions of a facility are decided for purposes of cost assignment and allocations.
15. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.
16. "Department" means the department of human services.
17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
18. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American

hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1993 edition.

20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
21. "Direct care costs" means the cost category for allowable resident care, activities, social services, laundry, and food costs.
22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
24. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
25. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
26. "Established rate" means the rate paid for services.
27. "Facility" means a licensed basic care facility not owned or administered by state government.
28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
31. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.
32. "Fringe benefits" means worker's compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.

33. "Highest market driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
35. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
36. "In-house resident day" for basic care and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.
37. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
38. "Limit rate" means the rate established as the maximum allowable rate.
39. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
40. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.
41. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
42. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
43. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

44. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
45. "Private room" means a room equipped for use by only one resident.
46. "Property costs" means the cost category for allowable real property costs and pass-through costs.
47. "Provider" means the organization or individual who has executed a provider agreement with the department.
48. "Rate year" means the year from July first through June thirtieth.
49. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
50. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
51. "Report year" means the provider's fiscal year ending during the calendar year immediately preceding the rate year.
52. "Resident" means a person who has been admitted to the facility, but not discharged.
53. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
54. "Routine hair care" means hair hygiene which includes grooming and shampooing.

55. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.
56. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
57. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
58. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required census records and financial information in a manner sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with applicable sections in this chapter.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by such cost report in sufficient detail to substantiate the cost data

reported. Each provider shall make such records available upon reasonable demand to representatives of the department.

- d. Except for motor vehicles used exclusively for resident-related activities, the provider shall maintain a mileage log for all motor vehicles that identifies mileage and purpose of each trip. Vehicle mileage for nonresident-related activities must be documented.
2. Accounting and reporting requirements.
- a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported. Ratesetting procedures must prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
 - b. To properly facilitate auditing, the accounting system must be maintained in a manner that allows cost accounts to be grouped by cost category and readily traceable to the cost report.
 - c. No later than the last day of the third month following the facility's fiscal yearend, except as provided for in subdivision d, each facility shall provide to the department:
 - (1) A cost report on forms prescribed by the department.
 - (2) A copy of the facility's financial statement. For provider organizations that operate more than one facility, a consolidated financial report can be provided. The information must be reconciled to each facility's cost report.
 - (3) A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.
 - (a) If a privately held or closely held corporation or partnership has an ownership interest in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the facility's cost report must be identified

regardless of the proportion of ownership interest.

- (b) If a publicly held corporation has an ownership interest of fifteen percent or more in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.
 - (4) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility or a certification that the content of any such document remains unchanged since the most recent statement given pursuant to this subsection.
 - (5) Supplemental information reconciling the costs on the financial statements with costs on the cost report.
 - (6) The following information, upon request by the department:
 - (a) Access to certified public accountant's workpapers that support audited, reviewed, or compiled financial statements.
 - (b) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.
 - (c) Separate financial statements for any organization, excluding individual facilities of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconcile costs on the financial statements to costs for the report year.
 - (d) Separate financial statements for any organization with which the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconcile costs on the financial statements to costs for the report year.
- d. A facility may elect to file a cost report based on a December thirty-first report year, rather than on the facility's fiscal yearend. Once elected, the facility may

not change the reporting period without written approval from the department. The due date for the information required in subdivision c will be March thirty-first if the facility elects a December thirty-first report year.

- e. In the event a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the facility's most recently established rate. Reinstatement of the current payment rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.
 - f. A facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may reduce the current payment rate to eighty percent of its most recently established rate until the information is completely and accurately filed.
 - g. Costs reported must include total costs and be adjusted to allowable costs. Adjustments made by the department, to attain allowable cost, may, if repeated on future cost filings, be considered as possible fraud and abuse. The department may forward all such items identified to the appropriate investigative group.
 - h. The department may grant an extension of the reporting deadline to a facility for good cause. To receive an extension, a facility shall submit a written request to the department. The deadline for filing may not be extended past April fifteenth of the year following the report year.
3. In order to properly validate the accuracy and reasonableness of cost information reported by the facility, the department may provide for an onsite audit.
 4. Penalties for false reports.
 - a. A false report is one where a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:
 - (1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;
 - (2) Terminate the department's agreement with the provider;

- (3) Prosecute under applicable state or federal law; or
 - (4) Use any combination of the foregoing actions.
- b. The department may determine a report is a false report if a provider claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The provider may indicate that the costs are under appeal and not claimed under protest to perfect a claim if the appeal is successful.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-03. General cost principles.

1. For ratesetting purposes, a cost must:
 - a. Be ordinary, necessary, and related to resident care;
 - b. Be what a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's length transaction; and
 - c. Be for goods or services actually provided in the facility.
2. The cost effects of transactions which circumvent these rules are not allowable under the principle that the substance of the transaction prevails over form.
3. Costs incurred due to management inefficiency, unnecessary care, unnecessary facilities, agreements not to compete, or activities not commonly accepted in the basic care industry are not allowable.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-04. Participation requirement. Beginning July 1, 1995, a facility may not receive aid to vulnerable aged, blind, and disabled persons assistance payments unless it complies with all provisions of this section.

1. A facility shall have an effective provider agreement with the department.

2. A facility may charge to hold a bed for a period in excess of the periods covered under subsection 2 or 3 of section 75-02-07.1-05 if:
 - a. The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and
 - b. For an eligible beneficiary, the payment comes from sources other than from the beneficiary's monthly income.
3. A facility may not violate any resident rights as set forth in North Dakota Century Code section 50-10.2-02. Collection and use by a facility of financial information of any applicant pursuant to a screening process does not raise an inference that the facility is using that information for any purpose prohibited by North Dakota Century Code section 50-10.2-02 or this section.
4. A facility may not require any vendor of medical care, who is paid by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the facility except as payment for the fair market value of renting or leasing space or equipment of the facility or purchasing support services, if those agreements are disclosed to the department.
5. A facility shall file on behalf of each resident or assist each resident in filing requests for any third-party benefits to which the resident may be entitled.
6. If a facility does not comply with provisions of this section, the department, if extreme hardship to the residents would otherwise result, may continue to make aid to vulnerable aged, blind, and disabled persons program payments to the facility for a period not to exceed ninety days from the date of mailing a written notice of a violation of this section. The facility may seek reconsideration of or appeal the department's action.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-05. Resident census.

1. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
 - a. Identification of the resident;

- b. Entries for all days, and not just by exception;
 - c. Identification of type of day, i.e., medical care, in-house; and
 - d. Monthly totals by resident and by type of day.
2. A maximum of fifteen days per occurrence may be allowed for payment for medical care leave. Medical care leave days in excess of fifteen consecutive days not billable to the aid to vulnerable aged, blind, and disabled persons program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.
 3. A maximum of twenty-eight therapeutic leave days per rate year may be allowed for payment. Nonbillable therapeutic leave days in excess of twenty-eight are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-06. Direct care costs. Direct care costs include only those costs identified in this section.

1. Resident care.

- a. Salary and employment benefits for the director of resident care, resident care supervisors, inservice trainers for resident care staff, registered nurses, licensed practical nurses, quality assurance personnel, resident care aides, medication aides, speech, occupational, and physical therapists.
 - b. Routine personal hygiene items and services necessary to meet the needs of residents, including hair hygiene supplies, combs, brushes, soap, razors, shaving cream, toothbrush, toothpaste, denture adhesive, dental floss, moisturizing lotion, tissues, deodorant, sanitary napkins, towels, washcloths, nail hygiene services, bathing, and personal laundry.
 - c. The cost of supplies used to provide therapy, or noncapitalized therapy or resident care equipment.
 - d. Medically necessary items, services, and durable medical equipment if the facility chooses to provide them.
- 2. Food.** The cost of consumable food products and dietary supplements.

3. Laundry.

- a. Salary and employment benefits for a director of laundry, laundry aides, seamstresses, and other personnel who gather, transport, sort, and clean linen and clothing.
- b. The cost of laundry supplies including detergents, softeners, and linens.
- c. Contracted services for laundry.

4. Social services. Salary and employment benefits or consultant fees for social workers or social worker designees.

5. Activities.

- a. Salary and employment benefits for activities director, activities aides, and other personnel who directly provide for leisure and recreational activities.
- b. The cost of leisure and recreational activities and supplies including games, ceramics, pets, out-of-house activities, and noncapitalized exercise equipment.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-07. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. Administration. Costs for administering the overall activities of the facility include:

- a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
- b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing, receiving and store personnel, and salary and employment benefits of all personnel not designated in other cost categories.
- c. Board of directors' fees and related travel expenses.
- d. Security personnel or services.

- e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.
 - f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
 - g. Telephone.
 - h. Postage and freight.
 - i. Membership dues and subscriptions.
 - j. Professional fees for services such as legal, accounting, and data processing.
 - k. Central or home office costs including property costs, but not including costs that may be allocated to other cost centers under subsection 4 of section 75-02-07.1-12.
 - l. Advertising and personnel recruitment costs.
 - m. Management consultants and fees.
 - n. Business meetings, conventions, association meetings, and seminars.
 - o. Travel.
 - p. Training, including inservice training.
 - q. Business office functions.
 - r. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
 - s. Working capital interest.
 - t. Any costs that cannot be specifically classified to other cost categories.
- 2. Chaplain.**
- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
 - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
- 3. Pharmacy.** Compensation for pharmacy consultants.
- 4. Plant operations.**

- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.
- b. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
- c. Repairs and maintenance contracts and purchased services.
- d. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.
- e. Motor vehicle operating and resident transportation expenses.

5. Housekeeping.

- a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.
- b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
- c. Contracted services for housekeeping.

6. Dietary.

- a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
- b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.

7. Medical records. Salary and employment benefits for personnel performing medical records maintenance.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-08. Property costs. Property-related costs and pass-through costs include only those costs identified in this section.

1. Depreciation.

2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in section 75-02-07.1-17.
4. Lease and rental costs.
5. Startup costs.
6. Reasonable legal and related expenses:
 - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after July 1, 1995, regarding a rate year beginning on or after July 1, 1995;
 - b. Related to legal services furnished on or after July 1, 1995; and
 - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal and related expenses paid.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-09. Cost allocations.

1. Direct costing of allowable costs must be used whenever possible. For a facility that cannot direct cost, the following allocation methods must be used:
 - a. If a facility is combined with other residential or health care facilities, the following allocation methods must be used:
 - (1) Resident care salaries that cannot be reported based on actual costs must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not

completed, resident care salaries must be allocated based on revenues for resident services.

- (2) Salaries for a director of resident care or resident care supervisors that cannot be reported based on actual costs or time studies must be allocated based on resident care salaries or full-time equivalents of resident care staff.
- (3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents of supervised staff.
- (4) Other resident care costs must be allocated based on resident days.
- (5) Dietary and food costs must be allocated based on the number of meals served or in-house resident days.
- (6) Laundry costs must be allocated on the basis of pounds of laundry.
- (7) Activity costs must be allocated based on in-house resident days.
- (8) Social service costs must be allocated based on resident days.
- (9) Housekeeping costs must be allocated based on weighted square footage.
- (10) Plant operation costs must be allocated based on weighted square footage.
- (11) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
- (12) Pharmacy costs for consultants must be allocated based on in-house resident days.
- (13) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding property, administration, and chaplain, in each facility.
- (14) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center must be allocated using the methodologies set forth in this section for that particular cost center.

- (15) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.
 - (16) Employment benefits must be allocated based on the ratio of salaries to total salaries.
- b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the department. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.
 - c. Malpractice, professional liability insurance, therapy salaries, and purchased therapy services must be direct costed.
 - d. The costs of operating a pharmacy may not be included as facility costs.
 - e. For purposes of this subsection, "weighted square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described in this subsection for that cost category.
2. If a facility cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:
 - a. Salaries must be allocated using facility estimates. If no estimates are made, salaries must be allocated entirely to indirect care costs if any of the employee's job duties are included in this cost category.
 - b. Employment benefits must be allocated based on the ratio of salaries in the cost center to total salaries.
 3. A facility that operates or is associated with nonresident-related activities, such as apartment complexes, shall allocate all costs, except administration costs, in the manner required by subsection 1, and shall allocate administration costs as follows:
 - a. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, exceed five percent of total facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated on the basis of the

percentage of total cost, excluding property, administration, and chaplain costs.

- b. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, are less than five percent of total facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated to each activity based on the percent gross revenues for the activity is of total gross revenues except that the allocation may not be based on a percentage exceeding two percent for each activity.
 - c. If the provider can document, to the satisfaction of the department, that none of the facility resources or services are used in connection with the nonresident-related activities, no allocation need be made.
 - d. The provisions of this subsection do not apply to the activities of health care facilities associated with a facility.
4. All costs associated with a vehicle not exclusively used by a facility must be allocated between resident-related and nonresident-related activities based on mileage logs.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-10. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of the facility and its activities. These costs are not allowed in computing the rates. Nonallowable costs include:

1. Political contributions;
2. Salaries or expenses of a lobbyist;
3. Advertising designed to encourage potential residents to select a particular facility;
4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;
5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-07.1-08;

6. Costs incurred for activities directly related to influencing employees with respect to unionization;
7. Cost of memberships in sports, health, fraternal, or social clubs or organizations such as elks, YMCA, country clubs, or knights of columbus;
8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies, including all dues unless an allocation of dues to such costs is provided;
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, kiwanis, in excess of one thousand five hundred dollars per cost reporting period;
10. Home office costs not otherwise allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockbroker and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with the acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with the transaction described in subsection 4 of section 75-02-07.1-13; and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any portion of the use of equipment was related to resident care;
16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administration costs,

travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any health care facility or basic care facility;

17. Costs incurred by the provider's subcontractors or by the lessor of property that the provider leases, that are an element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 1, 1995;
18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;
19. Depreciation expense for facility assets not related to resident care;
20. Nonbasic care facility operations and associated administration costs;
21. All costs for services paid directly by a government entity to an outside provider, such as prescription drugs;
22. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:
 - a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;
 - b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and
 - c. The facility documents all costs associated with a vehicle not exclusively used by the facility;
23. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;
24. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;
25. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;

26. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;
27. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion which relates to costs that benefit all eligible employees;
28. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;
29. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;
30. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;
31. The following taxes:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
 - b. State or local income and excess profit taxes;
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
 - d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;
 - e. Taxes on property not used in the provision of covered services;
 - f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider;
 - g. Self-employment (FICA) taxes, applicable to persons such as individual proprietors, partners, or members of a joint venture;

32. The unvested portion of a facility's accrual for sick or annual leave;
33. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the facility's fiscal yearend;
34. Employment benefits associated with salary costs not includable in a rate set under this chapter;
35. The cost, including depreciation, of equipment or items purchased with funds received from a government agency;
36. Hair care, other than routine hair care, furnished by the facility;
37. Interest expense on the portion of operating loans equal to nonallowable costs incurred for the current and prior reporting periods;
38. Increased lease costs of a provider except to the extent:
 - a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
 - b. The increased costs related to the ownership are charged to the lessee; and
 - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee; and
39. Bad debts expense.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-11. Offsets to costs.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income received by the facility in any form, with the exception of the established rate, income from payments made under the Job Training Partnership Act, and income from charges for private rooms, special services, or bed hold, must be offset up to the total of the appropriate actual allowable costs. If actual costs are not identifiable, income must be offset up to the total of costs as described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Sources of income and the related offset include:

- a. Activities income. Income from the activities department and the gift shop must be offset to activity costs.
- b. Bad debt recovery. Income for bad debts previously claimed must be offset to administration costs in total in the year of recovery.
- c. Dietary income. Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.
- d. Drugs or supplies income. Amounts received from the sale of resident care supplies to employees, doctors, or others not admitted as residents must be offset to resident care supplies.
- e. Insurance recoveries income. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.
- f. Interest or investment income. Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.
- g. Laundry income. All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.
- h. Other cost-related income. Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.
- i. Rentals of facility space income. Revenues received from outside sources for the use of facility space and equipment must be offset to property costs.
- j. Telephone income. Revenues received from residents, guests, or employees for use of a telephone must be offset to administration costs. Income from emergency answering services need not be offset.
- k. Therapy income. Income from all therapy services must be offset to resident care costs.
- l. Vending income. Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to administration costs.

2. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
3. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
4. Where an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's cost for goods or services purchased from the vendor.
5. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-12. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish central administration or other services including centralized accounting, purchasing, personnel, or management services. To the extent the home office furnishes services related to resident care to a facility, the reasonable resident-related costs, not to exceed actual costs of the services, are includable in the facility's cost report and are includable as part of the facility's rate.

2. Where the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.
3. Home office costs incurred for expansion of a chain organization must be directly allocated to the appropriate component of the chain. The costs of abandoned plans are not allowable.
4. Central or home office costs representing services of consultants required by law in areas for social services, nursing, therapies, or activities and central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of resident care may be allocated to the appropriate cost category of a facility according to subdivisions a through e.
 - a. Only the salaries and employment benefits associated with the individual performing the service may be allocated. No other costs may be allocated.
 - b. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services in the facility.
 - c. The cost in subdivision a for each consultant may not be allocated to more than one cost category in the facility. If more than one facility is served by a consultant, all facilities shall allocate the consultant's cost to the same operating category.
 - d. Top management personnel may not be considered consultants.
 - e. An allocation may not be made unless the consultant's full-time responsibilities are to provide the services identified in this section.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-13. Related organizations.

1. Except as provided in subsection 4, costs applicable to services, facilities, and supplies furnished to a provider by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the

local market. The provider shall identify the related organizations and costs in the cost report.

2. A provider may lease a facility from a related organization within the meaning of ratesetting principles. In such case, the rent paid to the lessor by the provider is not allowable as cost. The provider may include in its cost the allowable costs of ownership of the facility. These costs are property insurance, depreciation as provided for in section 75-02-07.1-15, interest on the mortgage as provided for in section 75-02-07.1-16, and real estate taxes as provided for in section 75-02-07.1-17. Other operating expenses of the related organization, relating to the leased facility, are not includable by the provider as an allowable cost of ownership, but may be included as allowable operating expenses subject to subsection 1.
3. The relationship between a provider and a related organization at the time a transaction between the two parties occurs must govern the treatment of cost regardless of subsequent events that may change the relationship between the parties.
4. In the case of a facility acquired through purchase of shares, interest and depreciation expense are treated in the same manner as if the capital assets of the acquired corporation were acquired as an ongoing operation by the acquiring entity on the day the secretary of state issues a certificate of dissolution of the acquired corporation if organized in North Dakota, or on the day the acquired corporation is irrevocably dissolved if organized other than in North Dakota, provided the transaction has all of the following characteristics:
 - a. The facility was owned and operated by the acquired corporation;
 - b. The acquired corporation is irrevocably dissolved, and all of its capital assets become the property of the acquiring entity, within one year after the first day on which any ownership interest in the acquired corporation was acquired by the acquiring entity; and
 - c. Neither the acquiring entity nor any related organization of the acquiring entity has had any ownership interest in the acquired corporation, or any ownership interest in any related organization of the acquired corporation, for at least ten years prior to the day the acquiring entity, or a related organization of the acquiring entity, first acquired any ownership interest in the acquired corporation.

5. For purposes of subsection 4, "acquiring entity" means the entity that, upon dissolution of the acquired corporation, owns all the capital assets formerly owned by the acquired corporation.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. The limit set under this subsection for the previous rate year adjusted by the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average; or
 - c. Thirty-three thousand seven hundred eighty-five dollars.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.
3. Compensation includes:
 - a. Salary for managerial, administrative, professional, and other services;
 - b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;
 - c. The cost of assets and services the person receives from the provider;
 - d. Deferred compensation, pensions, and annuities;
 - e. Supplies and services provided for the personal use of the person;
 - f. The cost of a domestic or other employee who works in the home of the person; or

- g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
- 4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.
- 5. Costs otherwise nonallowable under this chapter may not be included as compensation.
- 6. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-15. Depreciation.

- 1. Ratesetting principles require that payment for services include depreciation on all capital assets used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report.
- 2. Depreciation methods.
 - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax

purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different from that submitted on the cost report, a reconciliation must be prepared by the facility.

- b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:
 - (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or
 - (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
- c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
 - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) A composite remaining useful life for movable equipment, determined from the seller's records.

3. Acquisitions.

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars for each item, its cost must be capitalized and depreciated over the estimated useful life of the asset. Costs incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.
- b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or

one-half of the original estimated useful life, whichever is greater.

4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and must be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.
6. Determination of the cost basis of a facility and its depreciable assets acquired as an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
 - a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1995, is limited to the lowest of:
 - (1) Purchase price paid by the purchaser;
 - (2) Fair market value at the time of the sale;
 - (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes, plus recaptured depreciation; or
 - (4) The seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes, plus recaptured depreciation;

- b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes.
 - c. The cost basis of a facility and its depreciable assets acquired through donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes.
7. The seller shall use the sale price in computing the gain or loss on the disposition of assets.
 8. To properly provide for costs or valuations of assets, an appraisal is required if the provider has no historical cost records or has incomplete records of capital assets.
 9. An adjustment may not be allowed for any depreciable cost that exceeded the basis in effect for rate periods prior to July 1, 1995.
 10. The department shall establish a cost basis limitation for construction or renovation of a facility.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-16. Interest expense.

1. To be allowable, interest expense must meet all of the following criteria:
 - a. Interest expense must be supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds is required.
 - b. Interest expense must be identifiable in the facility's accounting records.
 - c. Interest expense must be related to the reporting period in which the costs are incurred.
 - d. Interest expense must be necessary and proper for the operation, maintenance, or acquisition of the facility.
 - e. Interest expense must not relate to funds borrowed to finance costs of assets in excess of the depreciable cost basis established at the time of purchase as recognized in section 75-02-07.1-15.

- f. If associated with refinancing or refunding debt, interest expense associated with the original borrowing must have been allowable when the debt was initially incurred.
 - g. If associated with borrowing for the purpose of acquiring assets as an ongoing operation in a bona fide sale, interest expense must be limited to the amount of interest associated with borrowing, occurring at the time of the sale, that does not exceed ninety percent of the cost basis as determined in subsection 6 of section 75-02-07.1-15.
 - h. In a sale not bona fide, interest expense may not exceed the amount that would have been allowable had the sale not occurred.
2. In cases where it is necessary to issue bonds for financing, any bond premium or discount must be amortized over the life of the bond issue.
 3. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner loans funds to a facility, the funds are considered capital, rather than borrowed funds.
 4. If a facility incurs interest expense because of late payments for resident services and charges a service charge or interest for late payments, the income must be offset against interest expense. If no interest expense is incurred by the facility because of late payments for resident services, service charges or interest paid must be offset against administration expenses.
 5. For refinanced or refunded debt, the total net aggregate allowable costs to be incurred for all reporting periods may not exceed the total net aggregate costs that would have been allowed had the refinancing or refunding not occurred. Annual allowable costs must be limited to the lesser of the cost that would have been allowed had the refinancing or refunding not occurred or the costs associated with the refinancing or refunding plus the portion, if any, of adjustments not recognized in prior cost reporting periods.
 6. Interest on operating loans paid more than three years after the borrowing is not allowable.
 7. Interest expense must be allocated between allowable and nonallowable expense based on the ratio of the principal balance of allowable debt to the principal balance of nonallowable debt at the time the debt was incurred, except that the ratio may be adjusted to reflect principal payments on nonallowable debt made in excess of scheduled repayments,

provided no funded depreciation or borrowed funds are used to make the excess principal payments.

8. For purposes of this section:
 - a. "Necessary" means that the interest is incurred on debt made to satisfy a financial need of the facility and for a purpose reasonably related to resident care; and
 - b. "Proper" means that the interest is incurred at a rate not in excess of what a prudent borrower would be obliged to pay in an arm's-length transaction and is incurred on debt made by a lender that is not a related organization, except for funds borrowed in accordance with section 75-02-07.1-19.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-17. Taxes.

1. Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes identified as nonallowable costs in section 75-02-07.1-10.
2. Whenever exemptions to taxes are legally available, the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for the taxes is not an allowable cost.
3. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as they are billed by the taxing authority.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-18. Startup costs. In the first stages of operation, a new facility incurs certain costs in developing its ability to care for residents prior to admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation that cannot be allocated to resident care because there are no residents receiving services. These costs are commonly referred to as startup costs. Actual allowable startup costs may be considered as deferred charges and allocated over a number of periods that benefit from the

costs. Where a facility has properly capitalized startup costs as a deferred charge, the startup costs must be recognized as allowable costs amortized over sixty consecutive months starting with the month in which the first resident is admitted.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-19. Funded depreciation.

1. Funding of depreciation is the practice of placing funds, including nonborrowed bond reserve and sinking funds, in a segregated account for the acquisition of capital assets used in rendering resident care or for other capital purposes related to resident care. Other capital purposes include capital debt liquidation, such as principal payments for bonds and mortgages.
2. All provisions of this subsection must be met in order to qualify as funding of depreciation. If the provisions are not met, income earned on investments must be offset to interest expense.
 - a. The action to fund depreciation must be approved by the appropriate managing body of the facility.
 - b. The fund or funds must be clearly designated in the facility's records as funded depreciation.
 - c. Funded depreciation (total market value of fund) must be available, unless contractually committed as provided in subsections 8 and 9, on an as-needed basis for the acquisition of the facility's capital assets used to render resident care, or for other capital purposes related to resident care. Loans made from funded depreciation do not alter the requirement that funded depreciation must be available.
 - d. Income earned on investments in the fund must be deposited in and become part of the funded depreciation account.
 - e. Deposits to the funded depreciation account must remain for six months or more to be considered as funded depreciation. Deposits of less than six months are not eligible for the benefits of the funded depreciation account. Investment income earned prior to elapse of the six-month period may not be offset unless the deposits are actually withdrawn and then only if the withdrawal is not for capital purposes.

- f. Funded depreciation may not be restricted for a specific or future purpose.
 - g. When a provider invests or transfers the assets of the fund to a home office of a chain organization or the motherhouse or governing body of a religious order or to other related parties, the assets are considered to be the facility's funds and are subject to all provisions of this section.
3. Total funded depreciation from deposits in excess of accumulated depreciation on resident-related assets must be considered as ordinary investments and the income therefrom must be used to offset interest expense.
 4. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on the assets, and other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis.
 5. The facility may borrow from funded depreciation to obtain working capital for normal operating expenses used for resident care. In addition, the facility may borrow from funded depreciation accounts of related health care facilities if the funded depreciation accounts of the related facilities are maintained in accordance with health care financing administration regulations. The interest incurred by the general fund is allowable provided the loans are necessary and proper, and provided the funds withdrawn have met the six-month funding requirement. If the funds withdrawn do not meet the six-month funding requirement, interest paid on the loan is not an allowable cost. Funds loaned from funded depreciation under the provisions of this subsection are treated as available funded depreciation for purposes of this section. Costs incurred to secure lines of credit to ensure availability are not allowable costs.
 6. Interest paid by the general fund to the funded depreciation account is not an allowable cost if the facility borrows the funds to acquire capital assets. The facility is expected to use funded depreciation for that purpose.
 7. Deposits of funds into the funded depreciation account must be first applied to reduce loans outstanding from the funded depreciation account to the general fund. Until such loans, including related-party loans, are repaid in full, funds deposited in the funded depreciation account must be considered as repayments on the loans and any subsequent interest expense of the general fund to the extent of the repaid loans is not allowable.

8. Available funded depreciation must be withdrawn and used before resorting to borrowing for the acquisition of capital assets or other capital purposes. Because it is frequently difficult to time a bond offering or other borrowing to coincide with the exhaustion of available funded depreciation, it is sufficient if available funded depreciation is contractually committed to and expended during the course of construction.
9. Funds are considered available unless committed, by virtue of contractual arrangements, to the acquisition of capital assets used to render resident care, or to other capital purposes. Borrowing for a purpose intended by funded depreciation is unnecessary to the extent funded depreciation is available. Thus, interest expense for borrowing up to the amount of available funded depreciation is not an allowable cost.
10. When funded depreciation is used by the facility for other than the acquisition of capital assets, other capital purposes related to resident care, or loans to the general fund for current operating costs, the income earned on these funds while on deposit in the funded account must be adjusted in the report year the withdrawal was made. The adjustment must include all offsets not made in prior reporting periods for earnings applicable to the funds.
11. Borrowing for a purpose for which funded depreciation account funds may have been used makes the borrowing unnecessary to the extent that funded depreciation account funds were available at the time of the borrowing. Available funds in the funded depreciation account, to the extent of the unnecessary borrowing, are tainted funds. Interest expense incurred on borrowing for a capital purpose is not an allowable cost to the extent that funded depreciation account funds were available at the time of the borrowing.
12. A provider may remove the unnecessary characterization of borrowing, and thereby cure tainted funded depreciation, by using the tainted funds for a proper purpose described in subsection 1. Any funded depreciation that existed at the time of the unnecessary borrowing and is not classified as tainted must be used before any of the tainted funds.
13. When only a portion of the borrowing is considered unnecessary under subsection 11, subsequent repayments of the borrowing from general funds must first be applied to the allowable portion of the borrowing and then, when all of the allowable borrowing is repaid, to the unallowable portion of the borrowing. When funds from the funded depreciation account are used for the repayment of the unnecessary borrowing, an equivalent amount of tainted funds is cured without regard to the provisions of subsections 11 and 12. Where general funds are used to pay for the unallowable borrowing after the

necessary borrowing has been repaid, an equivalent amount of tainted funded depreciation is cured without regard to the provisions of subsections 11 and 12.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-20. Rate calculation. The actual rate is calculated using allowable historical operating costs plus adjustment factors, as provided in section 75-02-07.1-21, divided by resident days. The actual rate as calculated is compared to the limit rate to determine the lesser of the actual rate or the limit rate. The lesser of the actual rate or the limit rate provided for in section 75-02-07.1-22 is the established rate.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-21. Adjustment factors for direct care and indirect care costs. The increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, must be used to adjust historical allowable costs. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year. The increase in consumer price index must be used to adjust direct care and indirect care costs. Costs reported for a period other than twelve months ended December thirty-first of a report year must be adjusted to December thirty-first of a report year using the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, over the period ending December thirty-first of the report year, and beginning at the end of the month within which the report period ends.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-22. Rate limitations.

1. Historical costs, as adjusted, for all facilities for which a rate is established, must be used in the establishment of a limit rate. The actual rate for each facility must be determined in accordance with this chapter. The department shall rank licensed beds in all facilities reporting historical costs by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. This rate shall be the limit rate.

2. If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall determine reduced rates for all facilities with substantial capacity increases and for all new facilities.
3. The reduced rate for each facility subject to a reduced rate is determined by:
 - a. Establishing the total appropriation available for supplements during that reduced rate quarter;
 - b. Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;
 - c. Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;
 - d. Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with substantial capacity increases and in all new facilities, if those facilities were not subject to limits;
 - e. Subtracting the amount projected under subdivision c from the amount determined under subdivision a;
 - f. Subtracting the amount determined under subdivision e from the amount projected under subdivision d;
 - g. Dividing the amount determined under subdivision f by the number projected under subdivision b; and
 - h. Reducing the established rate set for that facility by the amount determined under subdivision g.
3. A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.
4. A reduced rate is effective during the reduced rate quarter for which it is established.
5. A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment

is made to the facility for services furnished during the first month of the reduced rate quarter.

6. For purposes of this section:
 - a. "New facility" means a facility that was not a licensed facility on or before July 1, 1995.
 - b. "Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.
 - c. "Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than a facility's licensed capacity on July 1, 1995, or a capacity increase to a licensed capacity equal to or greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.
 - d. "Supplement" means payments provided or the provision of payments under subsection 3 of North Dakota Century Code section 50-24.5-02.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-23. Rates.

1. Desk audit rate.

- a. The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment may not be made. The department shall review the information and make any appropriate adjustments.
- b. The desk audit rate must be effective July first of each rate year unless the department specifically identifies an alternative effective date, and must continue in effect until a final rate is established.
- c. The desk rate may be adjusted for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.

- d. The desk rate may be adjusted to reflect errors, omissions, or adjustments for the report year that results in a change of at least five cents per day.

2. Final rate.

- a. The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective July first of each rate year unless the department specifically identifies an alternative effective date.
- b. The final rate must include any adjustments for nonallowable costs, errors, or omissions found during a field audit or reported by the facility and that result in a change from the desk audit rate of at least five cents per day.
- c. The final rate may be revised at any time for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.
- d. If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
 - (1) Adjustments, errors, or omissions found within twelve months of the date of notification of the final rate not including subsequent revisions, and resulting in a change of at least five cents per day, must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
 - (2) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate not including subsequent revisions, and that would have resulted in a change of at least five cents per day had they been included, must be included as an adjustment on the latest filed cost report.
 - (3) Adjustments resulting from an audit of home office costs, and that result in a change of at least five cents per day, must be included as an adjustment in the report year in which the cost were incurred.

3. **Adjustment of the total payment rate.** The final rate as established must be retroactive to the effective date of the desk rate.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-24. Rate payments.

1. The established rate must be considered as payment for all accommodations and includes all items includable as allowable under this chapter for individuals whose rate is paid in whole or in part by the department. No payment may be solicited or received from the resident or any other person to supplement the rate as established, unless otherwise provided for in this chapter.
2. The department may supplement the income of an eligible beneficiary receiving necessary basic care services only if the rate charged to private-pay residents for semiprivate accommodations equals or exceeds the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to an eligible beneficiary for the same bed type, including medical leave or therapeutic leave days.
3. If the established rate exceeds the rate charged to a private-pay resident on any given date, the facility shall immediately report that fact to the department and charge an eligible beneficiary at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment to the department. The refund must be the difference between the established rate and the rate charged the private-pay residents times the number of resident days paid for eligible beneficiaries during the period in which the established rate exceeded the rate charged to the private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
4. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically identified in other sections of this chapter.
5. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to

establish peer groupings, limitations, or adjustments may not be used to change the peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-25. Special rates.

1. For a new facility, the department shall establish an interim rate equal to the lesser of the limit rate for the rate year in which the facility begins operation, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. No retroactive adjustment may be made to the rate.
 - a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. The facility shall file an interim cost report by August thirty-first for the period ending June thirtieth of the period in which the facility first provides services. The interim cost report is used to establish the actual rate to be effective January first of the subsequent rate year.
 - b. If the effective date of the interim rate is on or after January first and on or before June thirtieth, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending December thirty-first of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year.
 - c. If the effective date of the interim rate is on or after July first and on or before August thirty-first, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending December thirty-first of the current rate year. This cost report must be used to establish the rate for the subsequent rate year.
2. For a facility with renovations or replacements in excess of fifty thousand dollars, and without a significant capacity increase, the rate established for direct care and indirect care, based on the last report year, plus a property rate

calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first of the month following the time the project is completed and placed into service. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year. The direct care, indirect care, and property rates must be added and, if in excess of the limit rate, must be limited to the limit rate.

3. For a facility with a significant capacity increase, the rate established for direct care and indirect care, based on the last report year, must be applied to all licensed beds. A property rate must be established based on projected property costs and projected census. The property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health through the end of the rate year. The direct care, indirect care, and projected property rates must be added and, if in excess of the limited rate, must be limited to the limit rate.
4. For a facility with no significant capacity increase and no renovations or replacements in excess of fifty thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
5. For a facility changing ownership during the rate period, the rate established for the previous owner must be retained. The rate for the next rate period following the change in ownership must be established:
 - a. For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; or
 - b. For a facility with less than four months of operations under the new ownership during the report year, by indexing the rate established for the previous owner forward using the adjustment factors as set forth in section 75-02-07.1-21.

6. For a facility terminating its participation in the aid to vulnerable aged, blind, and disabled persons program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until eligible beneficiaries can be relocated.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-26. One-time adjustments.

1. a. The department may provide for an increase in the established rate for additional costs incurred to meet licensure standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary or other costs increased to correct the deficiencies cited in the survey process.
- b. The facility shall submit a written request to the department within thirty days of submitting the plan of correction to the state department of health. The request must:
 - (1) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's licensure survey;
 - (2) Identify the number of new staff or additional staff hours and the associated costs required to meet the licensure standards;
 - (3) Provide a detailed list of any other costs necessary to meet licensure standards;
 - (4) Describe how the facility shall meet licensure standards if the adjustment is received, including the number and type of staff to be added to the current staff and the projected salary and fringe benefit cost for the additional staff; and
 - (5) Document that all available resources, including efficiency incentives, if used to increase staffing, are not sufficient to meet licensure standards.
- c. The department shall review the submitted information and may request additional documentation or conduct onsite visits.

- d. If an increase in costs is approved, the adjustment must be calculated based on the costs necessary to meet licensure standards less any incentives included when calculating the established rate. The net increase must be divided by resident days and the amount calculated must be added to the established rate. This rate must then be subject to any rate limitations that may apply.
 - e. Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.
 - f. If the actual cost of implementation exceeds the amount included in the adjustment, no retroactive settlement may be made.
- 2.
- a. The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and beyond the control of those responsible for the management of the facility.
 - b. Within sixty days after first incurring the unforeseeable expense, the facility shall submit to the department a written request containing:
 - (1) An explanation as to why the facility believes the expense was unforeseeable;
 - (2) An explanation as to why the facility believes the expense was beyond the managerial control of the owner or administrator of the facility; and
 - (3) A detailed breakdown of the unforeseeable expenses by expense line item.
 - c. The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on their background and knowledge of basic care industry and business trends.
 - d. The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

- e. Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-27. No rate adjustments of less than five cents per day. Under no circumstances, including an appeal or judicial decision to the effect that a rate was erroneously established, may a rate adjustment be made unless the cumulative impact of adjustments equals or exceeds five cents per day.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-28. Notification of rates. The department shall notify each facility of the desk audit rate on or before May twenty-first of the year in which the rate year begins.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-29. Reconsiderations and appeals.

1. Reconsiderations.

- a. Any requests for reconsideration of the final rate must be filed with the department within thirty days of the date of the rate notification.
- b. The department shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. Appeals.

- a. A provider dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal may be perfected by mailing or delivering, on or before five p.m. on the thirty-first day after the date of mailing of the determination made with respect to a request for reconsideration, the information described in this

subsection to the department, at the address the department designates. An appeal under this section is perfected only if accompanied by written documents including:

- (1) A copy of the letter received from the department advising of the decision on the request for reconsideration;
- (2) A statement of each disputed item and the reason or basis for the dispute;
- (3) A computation and the dollar amount that reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
- (4) The authority in statute or rule upon which the appealing party relies for each disputed item; and
- (5) The name, address, and telephone number of the person to whom all notices regarding the appeal may be sent.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-30. Resident personal funds.

1. A facility may not require a resident to deposit personal funds with the facility.
2. Upon written authorization of a resident or the resident's legal representative, a facility shall hold, safeguard, manage, and account for the resident's personal funds deposited with the facility.
3. A facility may not charge the resident for holding, safeguarding, managing, or accounting for the resident's personal funds. Any related administrative costs, including bank charges, must be included in the daily rate. A facility may not impose a charge against a resident's personal funds for any item or service included in the daily rate.
4. A facility may maintain a resident's personal funds not exceeding one hundred dollars in a noninterest-bearing account. A facility shall deposit any resident's personal funds in excess of one hundred dollars in an interest-bearing account separate from any of the facility's accounts. The facility shall credit interest earned to the resident's account.

5. A facility shall maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds. An individual financial record must be available on request and a written accounting of transactions must be provided quarterly to the resident or the resident's legal representative.
6. A resident's personal funds may not be commingled with any facility funds or with funds of any person other than another resident.
7. Upon death of a resident, a facility shall promptly convey the resident's personal funds, and a final accounting of those funds, to the individual administering the resident's estate. For purposes of this section, an "individual administering the resident's estate" includes a person lawfully empowered to facilitate the transfer of small estates without the use of a personal representative.

History: Effective July 1, 1996.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

CHAPTER 75-03-08

AGENCY SYNOPSIS: In regard to proposed amendments to North Dakota Administrative Code Chapter 75-03-08, Family Child Care Homes - Early Childhood Services and North Dakota Administrative Code Chapter 75-03-10, Child Care Center - Early Childhood Services.

The North Dakota Department of Human Services proposed amendments to North Dakota Administrative Code chapter 75-03-08, Family Child Care homes - Early Childhood Services and North Dakota Administrative Code chapter 75-03-10, Child care Center - Early Childhood Services. A public hearing on the rules was held on December 5, 1995, in Bismarck, North Dakota. Another public hearing on these proposed rules was held on December 6, 1995, in Fargo, North Dakota. Written data, views, and arguments were received until January 5, 1996.

Chapter 75-03-08 sets forth standards and requirements for Family Child Care Homes - Early Childhood Services. Section 75-03-08-05.1 sets forth requirements for obtaining a provisional license. Section 75-03-08-06.1 addresses staffing requirements. Section 75-03-08-06.2 outlines minimum qualifications of family child care providers. Section 75-03-08-06.3 delineates minimum qualifications of all caregivers and volunteers who provide direct care, supervision, and guidance to children.

Section 75-03-08-06.4 addresses provider responsibilities. Section 75-03-08-06.5 sets forth provider and caregiver health requirements. Section 75-03-08-06.6 defines physical facilities. Section 75-03-08-06.7 outlines admission procedures. Section 75-03-08-06.8 sets forth program requirements. Section 75-03-08-06.9 addresses nutrition. Section 75-03-08-06.10 provides for health protection.

Section 75-03-08-06.11 requires providers to maintain records relevant to children in care. Section 75-03-08-06.12 sets forth guidelines for discipline. Section 75-03-08-07.1 concerns the effect of conviction on licensure. Section 75-03-08-07.2 addresses child abuse and neglect determinations. Section 75-03-08-09 sets forth allowable time periods for correction of deficiencies. Section 75-03-08-10 outlines fiscal sanctions. Section 75-03-08-11 requires centers to be smoke free. Section 75-03-08-12 allows applicants for a license or licenseholders to appeal license revocation or reject a corrective action plan.

Chapter 75-03-10 sets forth standards and requirements for a Child Care Center - Early Childhood Services. Section 75-03-10-07.1 addresses the effect of conviction on licensure. Section 75-03-10-07.1 addresses child abuse and neglect determinations. Section 75-03-10-22.1 provides for a smoke-free environment. Section 75-03-10-32 changes the caption to Fiscal Sanctions. Section 75-03-10-33 outlines appeal procedures.

Nine commenters presented oral comments and six commenters presented written comments.

75-03-08-01. Purpose. ~~The purpose of this chapter is to establish minimum standards of family child care and to assure that these standards are maintained.~~ Repealed effective July 1, 1996.

History: Effective December 1, 1981.
General Authority: NDCC-50-11.1-08
Law Implemented: NDCC-50-11.1-01

75-03-08-02. Authority and objective. Pursuant to North Dakota Century Code section 50-11.1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1. Repealed effective July 1, 1996.

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. "Caregiver" means any person individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a family 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.
6. "Family child care provider" means the person individual 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~~ under 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 and for two additional school-aged children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year, at any one time. Children using a family child care home as a McGruff

safe house or block house during an emergency shall not be counted towards a family child care home's population.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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~~ is evidence of compliance with the standards contained in this chapter at the time of licensure.
2. The current license ~~shall~~ must be available prominently displayed in the premises to which it applies.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 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 licenseholder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever occurs first ~~occurs~~, provided, however, that this subsection ~~shall~~ does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
3. The department may revoke a license to operate a family child care home without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-08-05.1. Provisional license.

1. A family child care provider who applies for a license for a newly opened family child care home or for a family child care home previously licensed, if the family child care home fails to comply with all applicable standards and regulations of the department, at the discretion of the regional director of the

human service center or the regional director's designee, may be issued a provisional license.

2. A provisional license must:

- a. Prominently state that the family child care home has failed to comply with all applicable standards and rules of the department.
- b. State that the items of noncompliance are set forth on a document available upon request made to the family child care provider.
- c. Expire at a set date, not to exceed six months from the date of issuance.
- d. Be exchanged for an unrestricted license, which bears the same date as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and regulations.

3. A provisional license may be issued only to an applicant who has waived, in writing:

- 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 must be accompanied by a written statement of violations signed by the regional director of the human service center or the regional director's designee and acknowledged in writing by the provider.

5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all of the rights and privileges afforded the holder of an unrestricted license.

6. The department shall not issue a provisional license if the facility is not in compliance with subsection 15 of section 75-03-08-06.6.

7. The provider must prominently display the provisional license.

8. The provider must provide notice to parents that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

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. 1. Application shall must be made in the form and manner prescribed by the department.
- b. 2. Any license issued by the department shall ~~serve~~ 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~~ this chapter at the time of licensure.
- e. 3. The license shall ~~be~~ is nontransferable and shall ~~be~~ is 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 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. 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 five hours of county agency approved training related to child care 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.

e.--Minimum--qualifications--of--all--caregivers--who--provide direct--care,--supervision,--and--guidance--to--children. Caregivers--shall:

{1}--Be--at--least--fourteen--years--of--age.

{2}--Be--mentally,--physically,--and--emotionally--able--to provide--adequate--care--for--the--children--under--their supervision.

{3}--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--department--may
require--the--provider--or--caregiver--to--be--evaluated--by
appropriate--professionals,--with--the--results--provided
to--the--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.--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,--passageways--leading--to
outdoor--exits,--and--areas--occupied--by--furniture--or
appliances--that--children--should--not--play--on--or--under.

(2)--The--home--must--be--clean--and--maintained--to--protect--the
health--and--safety--of--children,--The--home--and--outdoor
play--area--must--be--free--of--clutter,--accumulation--of
refuse,--standing--water,--unprotected--wells,--debris,
attractive--nuisances,--and--other--health--and--safety
hazards,----Rubbish--and--garbage--must--be--regularly
removed.

(3)--There--must--be--adequate--heating,--ventilation,
humidity,--and--lighting--for--the--comfort--and--protection
of--the--health--of--the--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) --Indoor--and-outdoor-equipment,-toys-and-supplies-must be-safe,-strong,-nontoxic,-and-in-good-repair.
- (11) --Doors-and-pathways-may-not-be-blocked.
- (12) --The-home-shall-have-a-telephone.
- (13) --The--home-shall-have-an-indoor-bathroom-with-a-toilet and-plumbing.
- (14) --The-home-must-have-hot-and-cold-running-water.
- (15) --If-the-fire/safety,-health,-or-sanitation-of-the-home appears-questionable,-the-department-or-county-agency may--require--the--provider--to-obtain-an-appropriate inspection-or-inspections-from-the--appropriate--fire authority--or--environmental-health-practitioner,-and to-submit-the-results-of-the-inspection-to-the-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, airtight container until they are removed from the home and disposed of.

h. 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 child care provider.
- (2) The provider shall inform parents about the 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 child care program. The statement for each child must be completed annually.

i.--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.

j.--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--snack--lunches--are--provided--by--parents,--the--child care--provider--shall--supplement--these--lunches--as necessary.

k.--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.
- (5)--Sufficient--first-aid--supplies--shall--be--available--for--minor--emergencies.
- (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.
- (7)--At--least--one--person--who--may--be--called--upon--for--child--care--assistance--in--emergencies--shall--be--designated.
- (8)--Plans--shall--be--made--to--respond--to--minor--illnesses--when--children--can--be--cared--for--in--the--provider's--home.
- (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.
- (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.
- (11)--No--child--shall--be--allowed--to--play--outdoors--without--clothing--appropriate--to--the--climatic--conditions.
- (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.

1. 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 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 department, are in a position to serve their interests should that be necessary.

{e}--Persons who possess a written authorization from the child's parent.

m. 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; January 1, 1989; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-08

75-03-08-06.1. Staffing requirements. Staffing requirements are established by the number of children physically in care at the family child care home at a given time, rather than total enrollment.

1. A family child care provider may provide care to no more than four children age twenty-four months or younger, or for no more than a total of seven children.
2. A family child care provider may provide care for no more than a total of seven children as long as not more than three of the seven children are twenty-four months or younger.
3. If one or more child is a child with a handicapping condition, which requires more than usual care, the child's evaluated developmental age, rather than chronological age level, must be used in determining the number of children for which care can be provided.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

75-03-08-06.2. Minimum qualifications of family child care providers. Providers must:

1. Be at least eighteen years of age;
2. Certify attendance at a minimum of nine hours of department-approved training related to child care every licensing year;
3. Be physically present in the home no less than sixty percent of the time when children are in care;
4. Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;
5. Select an emergency designee for the home as backup for emergency assistance;
6. Ensure safe care for the children under supervision; and
7. Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.3. Minimum qualifications of all caregivers and volunteers who provide direct care, supervision, and guidance to children. Caregivers must:

1. 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;

2. Be mentally, physically, and emotionally able to provide adequate care for the children under supervision; and
3. Ensure safe care for the children under supervision.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.4. Provider responsibilities.

1. Effective January 1, 1997, providers shall maintain, at all times that services are provided, at least one staff member or caregiver who is currently certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department and who is certified or trained in a department-approved program to provide first aid. Emergency workers, substituting for less than six hours at any one session, are exempted from this training requirement. A family child care provider who uses an emergency worker and has no personnel present who is trained or certified to provide first aid and cardiopulmonary resuscitation may not be found in violation of this provision.
2. Providers shall maintain adult supervision in the home, at all times, for caregivers under the age of eighteen and children in care.
3. Providers shall ensure that all volunteers, including family members providing direct care for children, meet the minimum requirements of caregivers.
4. Children under care shall never be left without supervision by an individual meeting the minimum qualifications of a caregiver.
5. 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.
6. The operator shall report to the county director or the county director's designee the death or serious accident or illness requiring hospitalization of a child who dies, is injured, or becomes seriously ill while in the care of the facility.
7. The provider shall develop and follow a procedure for accountability when a child fails to arrive for the program.

8. Family child care providers shall provide carecheck information to parents.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.5. Provider and caregiver health requirements.

1. Prior to licensure or the employment of a caregiver, family child care home providers and caregivers shall complete a health self-certification form certifying that the provider and caregivers 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. If the provider adds or replaces a caregiver after the licensure process is complete, the provider must submit a self-certification form completed by the new caregiver to the department within five working days of the caregiver's first day.
2. Providers and caregivers shall furnish documentation of a negative tuberculosis test prior to licensure. If the provider adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative tuberculosis test before the first day of employment. Emergency workers, substituting for less than six hours at any one session, are exempted from this requirement. A family child care provider who uses an untested emergency worker may not be found in violation of this provision.
3. If the physical or mental health of a provider or caregiver appears questionable, the department may require the provider or caregiver to be evaluated by appropriate professionals, with the results provided to the department and any costs for the evaluations must be 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.
4. Providers and caregivers shall not use any drugs, except for medical purposes, or alcoholic beverages while children are in care.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.6. Physical facilities.

1. The family child care home shall provide adequate space, indoors and out, for the daily activities of the children. This must 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 must exclude bathrooms, pantries, passageways leading to outdoor exits, and areas occupied by furniture or appliances that children should not play on or under.
2. The home must be clean and maintained to protect the health and safety of children. The home and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, attractive nuisances, and other health and safety hazards. Rubbish and garbage must be regularly removed.
3. There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The home must be equipped with at least one working smoke detector per floor used by the children and one fire extinguisher per home.
5. Elevated areas, including stairs or porches must have railings and safety gates, where necessary, to prevent falls.
6. The home must have a drinking water supply from an approved community water system. If water is from another source, a sample must be tested and approved by the state department of health.
7. Each child shall have a comfortable and clean place to sleep or rest and an individual blanket. The floor may 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 with a firm mattress, or playpen. Caregivers shall not place children under the developmental or chronological age of thirty-six months on waterbeds.
8. Exterior play areas in close proximity to busy streets and other unsafe areas must be contained, fenced, or have natural barriers to restrict children from unsafe areas.
9. Potential hazards, including 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. Trigger locks must be used.

10. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair.
11. Doors and pathways must not be blocked.
12. The home must have a working telephone.
13. The home must have an indoor bathroom with a toilet and plumbing.
14. The home must have hot and cold running water. Hot water heaters must have a tempering valve.
15. If the fire, safety, health, or sanitation of the home appears questionable, the department or county agency may require the provider to obtain an appropriate inspection from the appropriate fire authority or environmental health practitioner, and to submit the results of the inspection to the county agency. Fire and safety inspections are required for all initially licensed family child care homes which are manufactured or in mobile homes, in apartment buildings, those providing care to children in basements, and homes that have alternate heating devices, including woodburning stoves, propane heaters, or fireplaces. Any fees for inspection are the family child care home provider's responsibility. Any problems found must be corrected.
16. Steps and walkways must be kept free from accumulations of water, ice, snow, or debris.
17. Combustible materials must be kept away from light bulbs and other heat sources.
18. Soiled or wet disposable diapers must be stored in a sanitary, airtight container until removed from the home and disposed of.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.7. Admission procedures.

1. The provider shall request a preadmission visit with 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 child care provider.

2. The provider shall inform parents about the child care program, places, and times of special activities outside the home, policies, and emergency procedures, and discuss information concerning the child to identify and accommodate the child's needs. An explanation of how accidents and illnesses will be dealt with must be provided, as well as methods of discipline and developmentally appropriate 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 the children at any time while in care.
5. The parents shall present a licensed health practitioner's statement, based upon a health assessment, or a health assessment statement completed by the parents at the time of the child's initial enrollment. No more than six months may have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement must indicate any special precautions for diet, medication, or activity. This statement must 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 July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.8. Program requirements.

1. The family child care provider shall have 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 must 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 must be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine must 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 must provide 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 must provide an opportunity for undisturbed rest. Napping schedules must be set for children according to the children's ages, needs, and the parent's wishes.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.9. Nutrition. Children shall be served a nutritious morning and afternoon snack and, if the parent does not provide a sack lunch, a nourishing lunch, and:

1. Children in care for more than three hours during the time cited above shall receive either a snack or lunch, whichever is appropriate to that time of day;
2. Children in care during any normal mealtime hour shall be served food appropriate to that time of the day; and
3. Children in care after school who have not had any food since lunch shall be provided with a snack.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.10. Health protection.

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health.
2. Family child care providers shall be certified or trained in a department-approved program to provide first aid. At least one staff member or caregiver must meet the current basic cardiopulmonary resuscitation certification requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation certification programs approved by the department.
3. Caregivers shall wash their 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. The family child care provider shall have on file a statement, signed by the child's parents, authorizing emergency medical care for each child.

5. Sufficient first aid supplies must be available for minor emergencies.
6. The family child care provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
7. The family child care provider shall designate at least one individual who may be called upon for child care assistance in emergencies.
8. The family child care provider shall develop plans to respond to minor illnesses when children can be cared for in the provider's home.
9. If children in care require medication, the caregiver shall secure and follow proper instruction as to the administration of medication. Medications must be stored in an area inaccessible to children. Medications stored in a refrigerator must be stored collectively in a spillproof container.
10. The family child care provider shall release a child only to the child's parent, guardian, or individual in loco parentis, or to an individual authorized, in writing, to take the child from the child care home.
11. No child shall be allowed to play outdoors without clothing appropriate for the climatic conditions.
12. No child shall be bathed, permitted to use a wading pool, or to play outdoors without adequate supervision.
13. Children's personal items, including 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. Cloth diapers are not to be used in a family child care home.
15. The standard for pets:
 - a. All pets must be approved by an environmental health practitioner;
 - b. All pets must be properly restricted and maintained;
 - c. The feeding and care of pets must be performed only by nonfood preparation staff; and

- d. Nondomestic animals such as skunks, opossum, or raccoons are prohibited.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-06.11. Records.

1. A copy of the current standards for family child care homes shall be kept in the premises.
2. The family child care provider shall maintain the following records:
 - a. The child's full name, birthdate, current home address, names of the child's parents or legal guardian and the business and home telephone numbers where those individuals 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 individuals authorized to take the child from the family child care home; and
 - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in or school aged.
3. All records which are maintained with respect to children receiving child care services, must be deemed confidential, and access must be limited to the provider, the provider's staff, parents, and to the following:
 - a. Authorized county agency and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and

c. Individuals who possess a written authorization from the child's parent.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-06.12. 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.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-06.13. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the child care center,

if the center provides transportation. Such a policy must 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 child care center. When the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a child care center, children shall be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. Child and staff ratios must 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 age and stage of development.
4. The driver shall be in compliance with all relevant state and local laws.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-08-07. Family child care home license. The right to operate a licensed family child care home is dependent upon continuing 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; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-07.1. Effect of conviction on licensure. No license may be issued to any individual, nor may any such previously issued license be renewed, unless the applicant files a sworn statement upon application showing the following standards:

1. The applicant for licensure may not have been found guilty of or pled guilty to a felony or an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23,

theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-29, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors. Conviction of violation of other states' statutes that pertain to criminal acts that require the same elements as North Dakota statutes but may have different names must carry the same weight in the licensure decision as does conviction for violation of North Dakota statutes.

2. The applicant must be issued a license, even if the applicant has pled guilty to or been found guilty of a felony or an offense under subsection 1, if the department determines the felony or offense does not have a direct bearing upon the applicant's ability to serve the public as an early childhood services family child care home provider or the department determines the appointment is sufficiently rehabilitated.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-08-07.2. Child abuse and neglect determinations. If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a caregiver or a family child care provider, the individual shall furnish information satisfactory to the department, from which the department can determine the caregiver's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the family child care provider and to the regional director of the human service center or the regional director's designee for consideration and action on the family child care home license.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-09. Allowable time periods for correction of deficiencies.

1. Deficiencies noted in a correction order must be made according to the following time periods:
 - a. For a violation of section 75-03-08-06.1, subsections 2 and 7 of section 75-03-08-06.6, and of section 75-03-08-06.12, the department shall require correction within twenty-four hours.
 - b. For a deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant

to section 75-03-11.1-19, a period of sixty days to correct the deficiency is allowed.

c. For a deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency is allowed.

d. For all other deficiencies, a period of twenty days to correct the deficiency is allowed.

2. All time periods must commence with the date of receipt of the correction order by the licensee.

3. The regional supervisor of early childhood program licensing shall have the authority to grant extensions of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted, to correct the deficiency. These extensions may be granted upon application by the licensee, upon a showing that the need for the extension is created by unforeseeable circumstances and that the licensee has diligently pursued the correction of the deficiency.

4. The provider shall provide the county with written notice of completion of the correction order action. The correction order must be considered to be effective until the county receives the notice.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-08-10. Fiscal sanctions.

1. A violation of subsections 1, 2, and 9 of section 75-03-08-06.6; subsection 3 of section 75-03-08-06.10; and section 75-03-08-06.12 results in the licensee being assessed a fiscal sanction of twenty-five dollars per day for noncompliance after the allowable time for correction of deficiencies ends.

2. A violation of section 75-03-08-06.1, subsections 8 and 10 of section 75-03-08-06.6; subsection 13 of section 75-03-08-06.10 may result in the licensee being assessed a fiscal sanction of fifteen dollars per day for noncompliance after the allowable time for correction of deficiencies ends.

3. A violation of any other section of this chapter noted in subsection 1 or 2 may result in the licensee or registrant being assessed a fiscal sanction of five dollars per day for

noncompliance after the allowable time for correction of deficiency ends.

History: Effective July 1, 1996.
General Authority: NDCC 50-11.1-07.4, 50-11.1-08
Law Implemented: NDCC 50-11.1-07.4

75-03-08-11. Smoke-free environment. In any family child care home, smoking is prohibited at any time while a child is receiving care.

History: Effective July 1, 1996.
General Authority: NDCC 23-12-10, 50-11.1-02.2
Law Implemented: NDCC 50-11.1-02.2

75-03-08-12. Appeals. Applicants for a license or holders of a license have the right to appeal a decision to deny or revoke a license. The appeal must be filed, in writing, with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing will be conducted in the manner prescribed by chapter 75-01-03.

History: Effective July 1, 1996.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-03-09

AGENCY SYNOPSIS: In regard to proposed amendments to North Dakota Administrative Code chapter 75-03-09, Group Child Care Early Childhood Services, North Dakota Administrative Code chapter 75-03-11, Preschool Educational Facilities Early Childhood Services, and North Dakota Administrative Code chapter 75-03-11.1, School Age Child Care Center Early Childhood Services.

The North Dakota Department of Human Services proposes amendments to North Dakota Administrative Code chapter 75-03-09, Group Child Care Early Childhood Services, proposed amendments to North Dakota Administrative Code, chapter 75-03-11, Preschool Educational Facilities Early Childhood Services, and proposed amendments to North Dakota Administrative Code, chapter 75-03-11.1, School Age Child Care Center Early Childhood Services. A public hearing on the rules under consideration was held on October 11, 1995, in Bismarck, North Dakota, and on October 12, 1995, in Fargo, North Dakota. Sixteen oral comments and twenty-one written comments were received.

Chapter 75-03-09 sets forth standards and requirements for Group Child Care facilities and contains nonsubstantive changes to conform the rule's language to present statutory usage. Section 75-03-09-06.1 incorporates new language for the effect of conviction on licensure. Section 75-03-09-06.2 allows the department to make child abuse and neglect determinations. Section 75-03-09-20.1 provides for a smoke-free environment. Section 75-03-09-27.1 restricts punishment of children. Section 75-03-09-30 changes the caption from penalties to Fiscal Sanctions. Section 75-03-09-31 adds language with respect to the appeals process.

Chapter 75-03-11 proposes changes to reflect changes in departmental general policy with respect to preschool educational facilities. Section 75-03-11-06.1 incorporates new language for the effect of conviction on licensure. Section 75-03-11-06.2 allows the department to make child abuse and neglect determinations. Section 75-03-11-18.1 provides for a smoke free environment. Section 75-03-11-24.1 restricts punishment of children. Section 75-03-11-27 delineates fiscal sanctions. Section 75-03-11-28 adds language with respect to the appeals process.

Chapter 75-03-11.1 sets forth standards and requirements for School Age Child Care Centers and contains nonsubstantive changes to conform the rule's language to present statutory usage. Section 75-03-11.1-27.1 is a new section which restricts punishment of children.

75-03-09-01. Purpose. ~~The purpose of this chapter is to establish minimum standards of group child care and to assure that these standards are maintained.~~ Repealed effective July 1, 1996.

History: Effective December 1, 1981;
General Authority: NDCC-50-11.1-08
Law Implemented: NDCC-50-11.1-01

75-03-09-02. Authority and objective. Pursuant to North Dakota Century Code section 50-11.1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1. Repealed effective July 1, 1996.

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~~ individual 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~~ individual with the responsibility for overseeing the day-to-day operation of a group child care program.
7. "Group child care operator" means any ~~person~~ individual or group in whom inheres the legal responsibility and the administrative authority for the operation of a group child care 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; July 1, 1996.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02

75-03-09-04. Effect of licensing and availability of license.

1. The issuance of a license to operate a group child care home or facility shall must be evidence of compliance with the standards contained in this chapter.
2. The current license shall must be available displayed in the premises to which it applies.
3. The license shall must specify the maximum number of children who may be cared for, and the home or facility shall at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03

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 occurs first ~~occurs~~; provided, however, that this subsection shall not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
3. The department may revoke a license to operate a group child care center without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 shall must be submitted to the county agency. Application shall must be made in the form and manner prescribed by the department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-09-06.1. Effect of conviction on licensure. No license may be issued to any individual, nor may any such previously issued license be renewed, unless the applicant files a sworn statement upon application showing the following standards:

1. The applicant for licensure may not have been found guilty of or pled guilty to a felony or an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23, theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-29, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors. Conviction of violation of other states' statutes which pertain to criminal acts that require the same elements as North Dakota statutes but may have different names must carry the same weight in the licensure decision as does conviction for violation of North Dakota statutes.
2. The applicant must be issued a license, even if the applicant has pled guilty to or been found guilty of a felony or an offense under subsection 1, if the department determines the felony or offense does not have a direct bearing upon the applicant's ability to serve the public as an early childhood services group child care facility provider or the department determines the applicant is sufficiently rehabilitated.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-09-06.2. Child abuse and neglect determinations. If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a caregiver or an operator, the individual shall furnish information satisfactory to the department, from which the department can determine the caregiver's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the group child care provider and to the regional director of the human service center or the regional director's designee for consideration and action on the group child care license.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-09-07. Nontransferability of license. The license shall must be nontransferable and shall must be valid only on the premises indicated on the license. A new application for a license must be filed by a licensed home or facility upon change of operator or location.

History: Effective December 1, 1981; amended effective July 1, 1996.

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 department, may, at the discretion of the regional director of the human service center or ~~his~~ the regional director's designee, be issued a provisional license.
2. A provisional license shall must:
 - a. Prominently state that the home or facility has failed to comply with all applicable standards and regulations of the 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; and
 - d. Be exchanged for an unrestricted license, which ~~will bear~~ bears the same date as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license shall may 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 must be accompanied by a written statement of violations signed by the regional director of the human service center or ~~his~~ the regional

director's designee and, in writing, acknowledged in writing by the operator.

5. Subject to the exceptions contained in this section, a provisional license entitles its the holder to all the rights and privileges afforded the holder of an unrestricted license.
6. The department shall not issue a provisional license if the facility is in violation of section 75-03-09-19 or 75-03-09-20.
7. The operator must prominently display the provisional license.
8. The operator must provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 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 and policies for the operation of each home or facility;
 - d. Notify the 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. Maintain required records;
 - f. Be responsible for all persons individuals who provide child care in the home or facility and for having an emergency designee for back-up emergency assistance;

- g. 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;
- h. Ensure that the home or facility is sufficiently staffed at all times to meet the child/staff child and staff ratios for children in attendance and that no more children than the licensed capacity be served at any one time;
- i. 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 must be shared so that to identify and accommodate the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will may be dealt with shall must be provided as well as methods of discipline and child management develop mentally appropriate guidance techniques to be used;
- j. Ensure that parents of each enrollee are notified of the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- k. Regularly offer parents opportunities to observe their children at any time while in care;
- l. 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;
- m. Provide parents with the name of the home or facility's operator, the group child care supervisor, and the emergency designee;
- n. 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;

- o. Develop and follow a procedure for accountability when a child fails to arrive for the program; and
 - p. Ensure that there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in first aid training approved by the department. Substitute staff who provide services of four hours or less are exempted from this requirement. Regularly used substitute staff are required to comply with this requirement.
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.
 5. The operator shall report to the county director or the county director's designee the death or serious accident or illness requiring hospitalization of a child who dies, is injured, or becomes seriously ill while in the care of the facility.
 6. For each new staff member hired, the operator must submit a self-certification form completed by the new staff member to the department within five working days of the staff member's first day.
 7. The operator shall provide information on carecheck to parents.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996.

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 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-; or
 - i. Qualification under regulations in force and effect for 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 and shall be certified in the provision of first aid or a first-aid training program approved by the department. The effective date of this subsection is ~~July 1, 1987~~ January 1, 1997.
4. The group child care supervisor shall certify attendance at a minimum of ~~six~~ ten hours of county-approved training related to child care annually.

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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-11. Duties of group child care supervisor. The supervisor shall, coextensive with the operator:

1. Be responsible for child care planning, supervision, and activity; and
2. Ensure that caregivers and children under the age of eighteen shall have adult supervision in the home or facility at all times.

History: Effective December 1, 1981; amended effective July 1, 1996.

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~~ a child's physical or emotional health; ;
6. Certify attendance at county-approved training related to child care annually.

- a. A caregiver working thirty to forty hours per week shall certify a minimum of ~~four~~ eight hours of training annually.
- b. A caregiver working twenty to thirty hours per week shall certify a minimum of ~~three~~ six hours of county-approved training annually.
- c. A caregiver working ten to twenty hours per week shall certify a minimum of ~~two~~ four hours of county-approved training annually.
- d. A caregiver working less than ten hours per week shall certify attendance at a minimum of ~~one-hour~~ two hours of county-approved training annually.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 staff and volunteers shall furnish documentation of a negative tuberculosis test prior to the first day of employment.
- 2. All caregivers shall certify, within ~~thirty~~ five 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- 3. There shall must 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- 4. If the physical or mental health of the operator, supervisor, or a caregiver appears questionable, the department or county agency may require the individual to present evidence of such capabilities, based on a formal evaluation. 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. Any costs for evaluations needed are to be borne by the caregiver.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 members and their utilization use 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 must be:
 - a. ~~Children~~ If all children in care are children less than twenty-four months of age, one staff per member may care for four children;
 - b. ~~Children~~ If all children in care are children twenty-four months of age to thirty-six months of age, one staff per member may care for five children;
 - c. ~~Children~~ If all children in care are children thirty-six months of age to four years of age, one staff per member may care for seven children;
 - d. ~~Children~~ If all children in care are children four years of age to five years of age, one staff per member may care for ten children;
 - e. ~~Children~~ If all children in care are children five years of age to six years of age, one staff per member may care for twelve children;
 - f. ~~Children~~ If all children in care are children six to twelve years of age, one staff per member may care for eighteen children; and
 - g. If children in care are of mixed age categories, the staff to child ratio is calculated in accordance with subsection 5.
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 must 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 is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

6. Children using the licensed facility for a McGruff safe house or block house during an emergency shall not be counted in the facility's ratio.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1, 54-12-20

75-03-09-15. Minimum records for each enrolled child. The following records shall must be kept and maintained for each child:

1. The child's full name, birthdate, and current home address-;
2. The names and, addresses, home and business telephone numbers 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 must 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 and ~~consolidated laboratories,~~ unless the child is a drop-in or school aged-; and
7. A ~~licensed health practitioner's statement based upon a health assessment or~~ a health assessment statement completed by the parent shall must 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 health assessment statement shall must 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; July 1, 1996.

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 must be confidential and access shall must be limited to staff and parents, and to the following:

1. Authorized county agency and department representatives;
2. ~~Persons~~ Individuals having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary; and
3. ~~Persons~~ Individuals 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; July 1, 1996.

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 must be made:

1. All caregivers shall be familiar with emergency first aid techniques;
2. Emergency response procedures shall must be established;
3. At least one working flashlight shall must be immediately available;
4. Sufficient first aid supplies shall must 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 must be made to respond to minor illnesses when children can be cared for in the home or facility. Medical consultation shall must 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 for the administration of such the medication shall must be given by the parent or physician.
 - a. Any medication prescribed by a physician shall must 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 must be kept in secure storage away from food items and out of the reach of children.
 - c. A written record of the administration of medication to each child must be kept. Records must include the time and date of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
8. A supervised temporary isolation area shall must 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 must be followed when such those signs or symptoms are observed:
 - a. Parents shall be notified immediately; and
 - b. First aid shall must be provided and medical care shall must be sought, as necessary.
9. Provisions shall must 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; July 1, 1996.

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 must be completed by local or state fire authorities on all facilities in which care is provided to seven or more children who are not members of the immediate family of the group child care operator and upon facilities providing for any number of children in homes which are manufactured or mobile homes, in apartment buildings, in basements, and in homes that have alternative heating devices such-as, including woodburning stoves, propane heaters, or fireplaces. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of such inspections with the 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 must 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; September 1, 1990; July 1, 1996.

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. 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 must be established to protect the health of the children and the caregivers.
4. Caregivers shall wash hands before meals and after using toilet facilities.
5. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
6. The home or facility's ground areas shall must be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards or attractive nuisances.
7. Garbage shall must be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall must not be permitted.
8. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the children shall must be contained, fenced, or have natural barriers to restrict children from unsafe areas.
9. Potentially hazardous items ~~sueh---as,~~ including guns, uninsulated wires, and poisonous plants must not be accessible to young children. Guns must be kept in locked storage separate from ammunition. Trigger locks must be used.
10. Indoor floors and steps shall must not be slippery or have splinters. All steps and walkways shall must be kept free from accumulations of water, ice, ~~or~~ snow, or debris.
11. Elevated areas ~~sueh-as,~~ including stairs or porches shall must have railings and approved safety gates, where necessary, to prevent falls.
12. The operator shall take steps to keep the home or facility free of insects and rodents. Chemicals for insect and rodent control shall must not be applied in areas accessible to children when children are present in the facility.
13. Doors and pathways shall must not be blocked.
14. ~~All~~ The operator must properly shield all light bulbs in areas used by children ~~must-be-properly-shielded.~~

15. ~~All~~ The operator must keep all combustible materials ~~must-be kept~~ away from light bulbs and other heat sources.
16. ~~There-must-be~~ The facility shall provide adequate ventilation, heating, humidity, and lighting for the comfort and protection of the health of the children.
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~~ must have surfaces repainted or ~~shall~~ 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, when measured by a lead-detecting instrument approved by the state department of health and ~~consolidated laboratories~~.
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~~ Medications stored in a refrigerator; ~~--they~~ must be stored collectively in a spillproof 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-raccoon-are-prohibited.--No-pets-may-be-allowed--in--the-food-service-area-during-meal-preparation-and-serving.~~ The standards for pets:
 - a. All pets must be approved by an environmental health practitioner;
 - b. All pets must be properly restricted and maintained;
 - c. The feeding and care of pets must be performed only by nonfood preparation staff; and
 - d. Nondomestic animals such as skunks, opossum, or raccoons are prohibited.

22. If wading pools are used by the home or facility, their use must be strictly supervised. Wading pools must be cleaned ~~(emptied)~~ and emptied daily. All swimming pools must be approved by the state department of health--and--consolidated laboratories' health's division of water supply and pollution control. Operational practices as established by the state department of health and--consolidated-laboratories must be followed.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-20.1. Smoke-free environment. In any group child care center, smoking is prohibited at any time while a child is receiving care.

History: Effective July 1, 1996.

General Authority: NDCC 23-12-10, 50-11.1-02.2

Law Implemented: NDCC 50-11.1-02.2

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 must include a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Unused areas, bathrooms, pantries, 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~~ shall 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; July 1, 1996.

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 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 must be provided.
 - a. The floor shall may 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 must be kept free of all obstructions while they are occupied.
 - c. There shall must 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~~ with a firm mattress, or a playpen with adequate padding.
 - f. Caregivers shall not place children who are under the developmental or chronological age of thirty-six months on waterbeds.
3. Water supply:
 - a. Drinking water shall must be from a source which is approved by the state department of health and ~~consolidated laboratories.~~
 - 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 must be provided and shall must be convenient to the areas used by the children and caregivers.

- b. Toilets shall must be located in rooms separate from those used for cooking, sleeping, and eating. A minimum of one lavatory and one flush toilet shall must 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 sixteen to eighteen children, excluding those children who are not toilet trained and able to use larger toilets, two toilets must be provided.
 - c. Child-sized toilet adapters or training chairs {, potty chairs}-shall, must be provided for use by children who require them. Training chairs shall must be emptied promptly and thoroughly cleaned and sanitized after each use.
 - d. At least one handwashing lavatory shall must be provided per toilet room facility or diapering area.
 - e. Soiled or wet diapers shall must be stored in a sanitary, airtight container until they--are removed and properly disposed of properly.
 - f. Sanitary hand-drying equipment, individual cloth, or paper towels shall must be provided near handwashing lavatories.
5. Sewage and wastewater disposal:
- 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; July 1, 1996.

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 must meet United States department of agriculture standards, and must 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 must be prepared on a weekly basis and shall be printed or written in such a manner that either the parents, the 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 must 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-24. Program requirements.

1. There shall must be a program of daily activities appropriate to the ages and needs of the children in group child care. The general activity schedule shall must include activities which foster sound social, intellectual, emotional, and physical growth.
2. The program shall must be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The general daily routine shall must be written, but subject to change. ~~It~~ The general 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 must provide children in care with opportunities for individual and small group activities.
4. The program shall must 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. Each home or facility shall have enough play materials and equipment so, that, at any one time, each child in attendance can be individually involved.
5. 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.
6. At the time of enrollment, the supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school and the parent's special concern about their past and future behavior and development. The schedule and activities shall must be designed to complement and supplement the children's experiences at home or in school.
7. The supervisor shall be responsible for contacting parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns shall must be communicated to parents promptly and directly.
8. Personal hygiene practices appropriate for a child's age and development shall must be stressed.
9. Each child's cultural and ethnic background and primary language or dialect shall must be respected by the caregivers.

History: Effective December 1, 1981; amended effective July 1, 1996.

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 must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, these shall must 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 to, or sung to.
- f. Low chairs and tables or infant seats with trays shall must be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall must 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 must 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 must be discarded in a safe, sanitary manner if it has been unrefrigerated for a total of four or more hours.
- l. Diapers shall must be changed promptly when needed and in a sanitary manner. 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. Facilities shall not use cloth diapers.

- 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 must 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 must 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, must be available.
 - (1) Pillows and mattresses shall must have clean coverings.
 - (2) Sheets and pillowcases shall must 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 must be laundered before use by other children.
 - (3) Each bed or cot shall must 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-school 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 must 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; July 1, 1996.

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 must 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 department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-27. 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--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. 2. 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. 3. 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. 4. 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-27.1. Punishment prohibited.

1. No child may be physically punished for lapses in toilet training.
2. Deprivation of meals may not be used as a form of discipline.
3. No child may be punched, spanked, shaken, pinched, roughly handled, bitten, or struck with an inanimate object by any caregiver.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08

75-03-09-28. Minimum standards for provision of transportation.

1. The child care operator shall inform parents of enrolled children of how any transportation will be provided, who may

provide transportation, insurance coverage, and how parental permission is to be obtained for special field trips and related activities which occur outside the home or facility. Any vehicle used for transporting children shall must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided, children shall be protected by adequate staff supervision, safety precautions, and ~~liability/medical~~ liability and medical insurance.
 - a. ~~Child/staff~~ Child and staff ratios shall must 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 age and stage of development.
4. The driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1981; amended effective July 1, 1996.

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 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 section 75-03-09-14, subsections 6 and 10 of section 75-03-09-20, section 75-03-09-27, and section 75-03-09-27.1, the department shall require correction within twenty-four hours.
 - b. 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 must be allowed to correct the deficiency ~~shall-be-allowed~~.
 - b= c. 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 must be allowed to correct the deficiency ~~shall--be allowed~~.

- e. d. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days must be allowed to correct the deficiency shall be-allowed.
 - d. e. For all other violations or deficiencies, a period of twenty days shall must be allowed to correct the deficiency.
2. All time periods shall must commence with the date of receipt, by the provider, of the correction order.
 3. The regional supervisor of 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.
 4. The operator shall provide the county agency with written notice of compliance of the correction order action. The correction order must be considered to be effective until the county receives the notice.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-09-30. Penalties Fiscal sanctions.

1. A violation of any of the following sections shall-subject subjects the licensee to a fiscal sanction of twenty-five dollars per day: subdivision g of subsection 3 of section 75-03-09-09, subsection 2 of section 75-03-09-14, section 75-03-09-19, subsections 7, 10, and 14 of section 75-03-09-20, and sections 75-03-09-21 and, 75-03-09-27, and 75-03-09-27.1.
2. A violation of any of the following sections shall-subject subjects 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 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~~ subjects the licensee to a fiscal sanction of five dollars per day.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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

75-03-09-31. Appeals. Applicants for a license or holders of a license have the right to appeal a decision to deny or to revoke a license. The appeal must be filed, in writing, with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted, in the manner prescribed by chapter 75-01-03.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-03-10

AGENCY SYNOPSIS: In regard to proposed amendments to North Dakota Administrative Code Chapter 75-03-08, Family Child Care Homes - Early Childhood Services and North Dakota Administrative Code Chapter 75-03-10, Child Care Center - Early Childhood Services.

The North Dakota Department of Human Services proposed amendments to North Dakota Administrative Code chapter 75-03-08, Family Child Care Homes - Early Childhood Services and North Dakota Administrative Code chapter 75-03-10, Child Care Center - Early Childhood Services. A public hearing on the rules was held on December 5, 1995, in Bismarck, North Dakota. Another public hearing on these proposed rules was held on December 6, 1995, in Fargo, ND. Written data, views, and arguments were received until January 1, 1996.

Chapter 75-03-08 sets forth standards and requirements for Family Child Care Homes - Early Childhood Services. Section 75-03-08-05.1 sets forth requirements for obtaining a provisional license. Section 75-03-08-06.1 addresses staffing requirements. Section 75-03-08-06.2 outlines minimum qualifications of family child care providers. Section 75-03-08-06.3 delineates minimum qualifications of all caregivers and volunteers who provide direct care, supervision, and guidance to children.

Section 75-03-08-06.4 addresses provider responsibilities. Section 75-03-08-06.5 sets forth provider and caregiver health requirements. Section 75-03-08-06.6 defines physical facilities. Section 75-03-08-06.7 outlines admission procedures. Section 75-03-08-06.9 addresses nutrition. Section 75-03-08-06.10 provides for health protection.

Section 75-03-08-06.11 requires providers to maintain records relevant to children in care. Section 75-03-08-06.12 sets forth guidelines for discipline. Section 75-03-08-07.1 concerns the effect of conviction on licensure. Section 75-03-08-07.2 addresses child abuse and neglect determinations. Section 75-03-08-09 sets forth allowable time periods for correction of deficiencies. Section 75-03-08-10 outlines fiscal sanctions. Section 75-03-08-11 requires centers to be smoke free. Section 75-03-08-12 allows applicants for a license or licenseholders to appeal license revocation or reject a corrective action plan.

Chapter 75-03-10 sets forth standards and requirements for a Child Care Center - Early Childhood Services. Section 75-03-10-07.1 addresses the effect of conviction on licensure. Section 75-03-10-07.1 addresses child abuse and neglect determinations. Section 75-03-10-22.1 provides for a smoke-free environment. Section 75-03-10-32 changes the caption to Fiscal Sanctions. Section 75-03-10-33 outlines appeal procedures.

Nine commenters presented oral comments and six commenters presented written comments.

75-03-10-01. Purpose. The purpose of this chapter is to establish minimum standards for licensed child care centers providing early childhood services and to assure that these standards are maintained. Repealed effective July 1, 1996.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCG-50-11.1-08

Law Implemented: NDCG-50-11.1-01

75-03-10-02. Authority and objective. Pursuant to North Dakota Century Code section 50-11.1-08, the 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. Repealed effective July 1, 1996.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCG-50-11.1-08

Law Implemented: NDCG-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 individual whose responsibility is the direct provision of early childhood services in facilities subject to this chapter.
3. "Child care center director" means any person individual with the responsibility for overseeing and planning the day-to-day child care center activities.
4. "Child care center operator" means any person individual 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 individual with the responsibility for organizing and supervising daily program activities.
6. "Department" means the North Dakota department of human services.
7. "Parent" means any person individual bearing the legal relationship of father or mother to a child enrolled in a child care center, including those persons individuals 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-10-04. Effect of licensing and display of license.

1. The issuance of a license to operate a child care center shall be evidence of compliance with the standards contained in this chapter at the time of licensure.
2. The license shall must be on display in the facility in a conspicuous place.
3. The license shall must specify the maximum number of children who may be cared for by the center; ~~and the~~. The center shall may at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-05. Denial or revocation of license.

1. The right to provide 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 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. The department may revoke a license to operate a child care center without first issuing a correction order.
4. 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 first; provided, however, that this subsection shall not limit the actions the

department may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 must be made with the county social service board of the county in which the facility is located.
2. Application shall must be made in the form and manner prescribed by the 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; July 1, 1996.

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, must be provided to the department and county agency upon application for license and shall must be provided to the parents of enrolled children when while the center is in operation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-07.1. Effect of conviction on licensure. No license may be issued to any individual, nor may any such previously issued license be renewed, unless the applicant files a sworn statement upon application showing the following standards:

1. The applicant for licensure may not have been found guilty of or pled guilty to a felony or an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23,

theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-29, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors. Conviction of violation of other states' statutes which pertain to criminal acts that require the same elements as North Dakota statutes but may have different names must carry the same weight in the licensure decision as does conviction for violation of North Dakota statutes.

2. The applicant must be issued a license, even if the applicant has pled guilty to or been found guilty of a felony or an offense under subsection 1, if the department determines the felony or offense does not have a direct bearing upon the applicant's ability to serve the public as an early childhood services child care center provider or the department determines the applicant is sufficiently rehabilitated.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-10-07.2. Child abuse and neglect determinations. If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a caregiver or an operator, the individual shall furnish information satisfactory to the department, from which the department can determine the caregiver's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the center child care operator and to the regional director of the human service center or the regional director's designee for consideration and action on the child care center license.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

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 department, may, at the discretion of the director of the human service center or his the director's 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 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-; and
 - d. Be exchanged for an unrestricted license, which ~~will bear~~ bears the same date as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license shall may 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 must be accompanied by a written statement of violations signed by the director of the human service center or his the regional director's 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.
 6. The department shall not issue a provisional license if the facility is in violation with section 75-03-10-21 or 75-03-10-22.
 7. The operator shall prominently display the provisional license.
 8. The operator shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 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 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 hiring practices and personnel policies for staff. These Written policies and procedures must include methods for 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, and the management of illnesses of the children and staff;
 - 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;
 - i. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of directors;
 - j. Maintain necessary information to verify staff qualifications and ensure that safe care be provided for the children in the facility. ~~If a caregiver or employee~~

who has access to children 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, 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. Cooperate with the department and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.;
- l. Designate a qualified center director.;
- 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 must be provided as well as methods of discipline and child management developmentally appropriate guidance techniques to be used.;
- 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.;
- 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.;
- 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 department of such changes and their effective date, duration, scope, and impact on the center.;
- 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.;
- 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-;

- 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-;
 - 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-;
 - 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 written policy for staff to handle this reporting-;
 - w. Ensure that there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department- who meets the training or certification requirements in the provision of first aid, effective January 1, 1996;
 - x. Develop and follow a procedure for accountability when a child fails to arrive for the program; and
 - y. Provide information on carecheck to parents.
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.
5. The operator shall report to the county director or the county director's designee the death or serious accident or illness requiring hospitalization of a child who dies, is injured, or becomes seriously ill while in the care of the facility.

6. For each new staff member hired, the operator must submit a self-certification form completed by the new staff member to the department within five working days of the staff member's first day.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996.

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~~ months of 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~~ months of experience in a child care center or similar setting.
 - d. A teaching certificate in elementary education with at least six ~~months~~ months of 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~~ year of 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 year of experience in a child care center or similar setting.

- g. Certification for a Montessori teacher training program with at least one year's year of 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 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.~~

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996.

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 department and other agencies designated by the 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 individual designated as an acting director for an ongoing period of less than thirty days must meet the qualifications of a child care supervisor.

7. Any person individual designated as an acting director for an ongoing period of more than thirty days must meet the qualifications of a child care director.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 or high school equivalency with at least one year's year of 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; July 1, 1996.

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~~ sixteen 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 ~~ten~~ thirteen hours of county agency-approved training related to child care annually.
 - (1) Caregivers working thirty to forty hours per week are required to certify ~~ten~~ thirteen hours of training annually.
 - (2) Caregivers working twenty to thirty hours per week are required to certify ~~eight~~ eleven hours of training annually.
 - (3) Caregivers working ten to twenty hours per week are required to certify ~~six~~ nine hours of training annually.
 - (4) Caregivers working less than ten hours per week are required to certify ~~four~~ seven hours of training annually.
- d. Not use any drugs ~~or alcoholic beverages~~ except for medical purposes while children are in care.
- e. Not use any alcoholic beverages while children are in care.
- f. 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;
 - d. Any special needs of the children assigned to the caregiver;
 - e. The planned program of activities at the center;
 - f. Rules and policies of the center;
 - g. Child abuse and neglect laws; and
 - h. Recognition and control of common childhood illnesses.
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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-14. Minimum qualifications for volunteers. ~~Volunteers~~ If providing child care, volunteers shall meet qualifications of child care caregivers, and receive orientation as needed for all assigned tasks.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 staff and volunteers shall furnish documentation of a negative tuberculosis test before the first day of employment.
2. All caregivers shall certify, within ~~thirty~~ five 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- 3. 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.

4. Caregivers with infectious or communicable conditions must be excluded from the facility until the condition can no longer be transmitted. Guidance regarding exclusion and return to employment shall be obtained through consultation with local and state health department authorities.

- 3- 5. If the physical or mental health of the operator, director, supervisor, or any caregiver appears questionable, the department may require the individual to present evidence of such capabilities based on a formal evaluation. 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 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; July 1, 1996.

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~~ use 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~~ child and 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 member per four children.
 - b. Children twenty-four months of age to thirty-six months of age, one staff member per five children.
 - c. Children three years of age to four years of age, one staff member per seven children.
 - d. Children four years of age to five years of age, one staff member per ten children.
 - e. Children five years of age to six years of age, one staff member per twelve children.
 - f. Children six to twelve years of age, one staff member per eighteen children.

3. ~~Where one or more children is~~ If a child with a mentally handicapping disabling condition is present for care, and the child requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall must be used in determining appropriate staff ratios.
4. Children with special conditions requiring more than usual care and supervision ~~must~~ shall 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 is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
6. Children using a facility such as a McGruff safe house or block house during an emergency shall not be counted in the facility's ratio.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-02.1

75-03-10-17. Minimum standards for enrollee's records. The following information ~~shall~~ must be kept and maintained in the records concerning each individual child enrolled in the child care center and ~~shall~~ must be updated as appropriate. Such information ~~shall~~ include includes:

1. The child's full name, birthdate, and current home address.
2. The names and addresses of the parents or other ~~persons~~ individuals legally responsible for the child, as well as their home and business telephone numbers.
3. Names and telephone numbers of ~~persons~~ individuals who can assume responsibility for the child if the ~~persons~~ individuals 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~~ individuals authorized to take the child from the child care center.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health ~~and-consolidated-laboratories~~.
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 ~~may~~ have elapsed between the date that the health assessment was completed and the date of initial enrollment. The statement shall ~~indicate~~ must:
 - a. Indicate any special precautions for diet, medication, or activity; ~~This-statement-shall-serve;~~
 - b. Serve as evidence that a child is physically able to take part in the child care program; ~~The-statement-for-each-child-must-be;~~ and
 - c. Be completed annually.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-10-18. Confidentiality of child's records. Information pertaining to the admission, progress, health, or discharge of a child shall must be confidential, and access shall must be limited to staff:

1. Staff and parents; ~~and-to-the-following;~~
- 1- 2. Authorized department representatives;
- 2- 3. Persons individuals having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve ~~their~~ the childrens' interests, should that be necessary; and
- 3- 4. Persons Individuals 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 the forms signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-10-19. Minimum provisions regarding emergency care for children. A center shall have written 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:

1. The conspicuous posting of emergency response procedures. At least one staff member ~~having received a minimum of five hours of first-aid training related to the health and safety of young children~~ shall be certified or trained in first aid and should be available at all times at the center.
2. ~~All staff members shall receive training~~ Training for all staff members concerning emergency procedures to ensure they are aware of the hazards of infection and accidents and how such problems can be minimized.
3. At least one state department of health and ~~consolidated laboratories~~ approved first-aid kit shall that must be maintained and kept in a designated location, ~~so as to be inaccessible to children,~~ yet readily accessible to staff members.
4. The placement of a telephone line immediately accessible to the center staff with a list of emergency telephone numbers conspicuously posted adjacent to such telephone.
5. When Available medical consultation regarding special care and medication when health policies of the facility allow ill children to be admitted or to remain in the child care center; ~~medical consultation shall be available regarding special care and medication.~~
6. ~~If children in the center require medication, written~~ Written parental permission to dispense medication must be obtained from the parent; and proper instructions given by the parent or physician as to the administration of such medication shall ~~be given by the parent or physician.~~
 - a. Any medication prescribed by a physician shall must 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.
7. 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.~~ The following procedures shall be followed when such these signs or symptoms are observed:
 - a. Parents shall be notified immediately.

- b. First aid shall must be provided and medical care shall be sought as necessary.
8. Children with infectious or communicable conditions must be excluded from the facility until the condition can no longer be transmitted. Guidance regarding exclusion and return to the facility must be obtained through consultation with local and state health department authorities.
9. All Adequate supervision for all children who remain at the center who are ill shall-be-well-supervised.
- 9- 10. A source of emergency health services shall be readily available to the center-, including:
- a. ~~There--shall-be-a~~ A prearranged plan for emergency medical care--Parents in which parents of enrollees shall-be are advised of ~~this~~ the arrangement.
- b. 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.
- ~~10- 11. A-child-care-center-shall-provide~~ The provision of information to parents, as needed, concerning child health and social services available in the community, and shall--assist assistance for parents in obtaining such services.
12. Provisions to inform parents, in writing, of any first aid administered to their child within twenty-four hours of the incident. Parents must be notified immediately of any injury that requires emergency care beyond first aid. Each injury report must be made a part of the child's record.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-20. Minimum emergency evacuation and disaster plan.

1. Each center shall have an approved and posted emergency disaster plan for the safety of the children in care in--ease of--an-emergency. Written disaster plans must be developed in cooperation with the authorities.
2. ~~Fire--inspections--shall--be--completed-by-local-or-state-fire authorities.--Written-disaster-plans--shall--be--developed--in cooperation-with-such-authorities-~~

- 3- Fire evacuation drills shall must be performed in accordance with the local fire department's guidelines.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-21. Fire inspections.

1. Annual fire inspections shall must 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 the inspections with the county licensing agency.
2. The facility shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.
3. 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-10-21.1. Annual health and sanitation inspection. The facility must have an annual health and sanitation inspection completed by an environmental health practitioner. Reports of the inspections must be filed with the department and any problems found must be corrected.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-22. Minimum sanitation and safety requirements for child care centers.

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. 2. 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. 3. 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. 4. Garbage must be kept away from areas used by children and kept in noncombustible containers with tight lids. Open burning is not permitted.
6. 5. If wading pools are used by the center, they must be strictly supervised. Wading pools must be cleaned ~~{emptied}~~ and emptied daily. All swimming pools must be approved by the state department of health ~~and consolidated laboratories'~~ health's division of water supply and pollution control. Operational practices as established by the state department of health ~~and consolidated laboratories~~ must be followed.
7. 6. 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. 7. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned on a routine basis.
9. 8. 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, or debris.

- ~~10-~~ 9. Elevated areas, such as including stairs or porches, must have railings and approved safety gates where necessary to prevent falls.
- ~~11-~~ 10. 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-~~ 11. Doors and pathways ~~must~~ may not be blocked.
- ~~13-~~ 12. All light bulbs in areas used by children must be properly shielded or shatterproof.
- ~~14-~~ 13. Combustible materials must be kept away from light bulbs and other heat sources.
- ~~15-~~ 14. ~~There--must~~ The center shall be adequate-ventilation,-heating, and adequately ventilated and heated with 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-~~ 15. 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-~~ 16. Personal items such as combs, pacifiers, and toothbrushes must be individually identified and stored in a sanitary manner.
- ~~18-~~ 17. 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~~ Medications stored in a refrigerator, ~~--they~~ must be stored collectively in a spillproof container.
- ~~19-~~ 18. Caregivers and staff members shall wash hands with soap and water before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that contaminates their hands.
- ~~20-~~ 19. ~~When--food~~ Food that is prepared, served, or stored in a child care center, ~~--it-will~~ must be done treated in a sanitary and safe manner with sanitary and safe equipment.

21. 20. When parents bring sack lunches for their children at the center, the operator shall provide adequate and appropriate refrigeration and storage, as required.

22. 21. 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. 22. 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 disposable diapers must be stored in a sanitary, airtight container. Disposable diapers must be removed at least daily and disposed of properly.

24. 23. Water supply:

a. Drinking water must be from a source which is approved by the state department of health and ~~consolidated laboratories~~.

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 state department of health and ~~consolidated laboratories~~ 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. 24. 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 step stools 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.
- h. Soap for handwashing must be available at each lavatory. The soap may be either liquid or bar. All caregivers, staff, and children shall wash their hands with soap and water after using toilet facilities. Children and staff shall be provided education and training on the correct handwashing method.

26- 25. Sewage and wastewater disposal:

- a. A child care center must meet the requirements of the state plumbing code as contained in 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- 26. Laundry:

- a. 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.
- b. 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.

- c. 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.
 - d. Under no circumstances will sorting of laundry be allowed in food preparation, serving, or kitchen areas.
 - e. 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, the water temperature must be greater than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius].
 - f. If the 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- 27. 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- 28. ~~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.~~ The standard for pets:
- a. All pets must be approved by an environmental health practitioner;
 - b. All pets must be properly restricted and maintained;
 - c. The feeding and care of pets must be performed only by nonfood preparation staff; and
 - d. Nondomestic animals such as skunks, opossum, or raccoons are prohibited.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-22.1. Smoke-free environment. In any child care center, smoking is prohibited at any time while a child is receiving care.

History: Effective July 1, 1996.

General Authority: NDCC 24-12-10, 50-11.1-02.2

Law Implemented: NDCC 50-11.1-02.2

75-03-10-23. Minimum requirements regarding space.

1. Each center shall provide adequate space for all children in attendance.
2. There shall must be a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child.
 - a. 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, must not be considered when computing minimum space.
 - b. 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~~ shall 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.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-24. Minimum requirements for lighting The child care center and all rooms therein shall be properly lighted. The following technical requirements shall must be met:

1. Sixty-five foot-candles of light for all general use and play areas.
2. Twenty-five foot-candles of light for all bathrooms.
3. Fifty foot-candles of light for any kitchen, laundry, and office facilities.

4. Fifteen foot-candles of light for corridors and storage areas.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 must meet United States department of agriculture standards, and must 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~~ shall 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~~ at that time of the day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate ~~to~~ at 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 department, or other appropriate ~~persons~~ individuals may review them.
6. Information provided by the children's parents as to their eating habits, food preferences, or special needs shall must 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.~~ Coercion or forced feeding is prohibited.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 must be based upon the developmental needs of the children enrolled. ~~It shall~~ The program must 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 must be written and shall must 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 must 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 disabled. The written program shall must be made available to parents.
4. The program shall must include firsthand experiences for children to learn about the world in which they live. Opportunities shall must be provided for older children to participate in supervised visits and recreational activities in the community.
5. Learning experiences shall must be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
6. The program shall must 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--naproom, 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 must 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.
11. 9. The cultural diversity of the children shall must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, where appropriate.
12. 10. Equipment and furniture shall must be durable and safe and shall must be appropriately adapted for children's use.
13. 11. Sufficient space accessible to children shall must be provided for each child to have the child's own clothes and to keep other personal items.
14. 12. The center shall supplement, augment, and reinforce the child's activities at home, and where applicable, at school.
15. 13. 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 parents' special concern about their past and future behavior and development. The schedule and activities in child care shall must be designed to complement and supplement the children's experiences at home and in school.
16. 14. Parents shall be encouraged to visit the facility, observe, and participate in the care of their children.
17. 15. The child care center personnel shall be responsible for contacting parents to exchange information concerning the child and the child care program as well as to offer them meaningful opportunities to participate in general program policymaking.
18. 16. Personal hygiene practices appropriate for a child's age and development shall must be stressed.

- 19- 17. 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 must be communicated to the parent promptly and directly.
- 20- 18. Each child's cultural and ethnic background and primary language or dialect shall must be respected by the child care personnel.
- 21- 19. Each facility shall have a designated area where a child can sit quietly or lie down to rest. There shall must be sufficient cots or sleeping mats so that each child in attendance can have an individual napping space. The floor shall may be used only when carpeted or padded, warm, free from drafts, and when individual blankets or coverings are used. Napping schedules shall must 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; July 1, 1996.

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 including creeping or crawling in a safe, clean, open, uncluttered area.
- c. Each infant shall have an individual sleeping space. The sheets shall must be changed whenever they become soiled or wet.
- d. Children under twelve months of age and any child unable to walk unassisted shall sleep in a crib with a firm mattress or playpen.
- e. Caregivers shall not place children under the developmental or chronological age of thirty-six months on waterbeds.

- f. 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- g. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.
- f- h. Low chairs and tables or infant seats with trays shall must be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall must have a wide base and a safety strap.
- g- i. Children shall never be shaken or jostled in a moderate or severe manner.
- h- j. All cries of infants shall must be investigated.
- i- k. Infants shall be fed or supervised individually and their diet and pattern of feeding shall be appropriate to their individual developmental needs.
- j- l. At no time shall infants be left unattended while feeding.
- k- m. 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 must 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 must 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 must have clean coverings.
 - (2) Sheets and pillowcases shall must 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 must 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-school 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 must reflect the special needs of the children who are provided drop-in service.
- c. Admittance procedures shall must 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; July 1, 1996.

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~~ the center shall ~~be have~~ appropriate provisions to meet those needs. The center shall document how the child's special needs shall ~~will~~ 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 department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-29. Discipline. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, ~~talk~~ talking with the child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children ~~must~~ shall 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 of the center's license.

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~~. Any young child ~~must~~ shall 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~~ disciplined 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-30. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the child care center, if the center provides transportation. Such a policy shall must 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 child care center. When the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children shall must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a child care center, children shall be protected by adequate staff supervision, safety precautions, and ~~liability/medical~~ liability and medical insurance.
 - a. ~~Child/staff~~ Child and 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 age and stage of development.
4. The driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1981; amended effective July 1, 1996.

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 of section 75-03-10-16, subsection 3 of section 75-03-09-22, and section 75-03-09-29, the department shall require correction within twenty-four hours.
 - b. 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 must be allowed to correct the deficiency ~~shall be allowed~~.
 - ~~b=~~ c. 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 must be allowed to correct the deficiency ~~shall be allowed~~.
 - ~~e=~~ d. For a violation or deficiency that requires substantial building remodeling, construction or change, a period of sixty days must be allowed to correct the deficiency ~~shall be allowed~~.
 - ~~d=~~ e. For all other violations or deficiencies, a period of twenty days ~~shall~~ must be allowed to correct the deficiency.
2. All time periods ~~shall~~ must commence with the date of receipt, by the provider, of the correction order.
3. The regional supervisor of 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.
4. The operator shall provide the county social service staff with written notice of completion of the correction order

action. The correction order must be considered to be in effect until the county receives the notice.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-10-32. Penalties Fiscal sanctions.

1. A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: section 75-03-10-07.2; subdivision j of subsection 3 of section 75-03-10-09; subsection 2 of section 75-03-10-16; section 75-03-10-21; subsections 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; 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; subsections 3, 10, and 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; July 1, 1996.

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

75-03-10-33. Appeals. Applicants for a license or holders of a license have the right to appeal a decision to deny or revoke a license. The appeal must be filed, in writing, with the department within ten days of receipt of written notice of the decision. Upon receipt of a timely appeal, an administrative hearing will be conducted in the manner prescribed by chapter 75-01-03.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-03-11

75-03-11-01. Purpose. ~~The purpose of this chapter is to establish standards for preschool educational facilities and to assure that these standards are maintained.~~ Repealed effective July 1, 1996.

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. Pursuant to North Dakota Century Code section 50-11:1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11:1. Repealed effective July 1, 1996.

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 individual other than a teacher or one who works in a preschool educational facility under the supervision of a teacher or a 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 individual with the responsibility of supervising and organizing program activities in a preschool educational facility.
5. "Facility operator" means any person individual or group in whom inheres the legal responsibility and the administrative authority for a preschool educational facility. The facility operator is the applicant for license or the licensee pursuant to this chapter.
6. "Parent" means any person individual bearing the legal relationship of father or mother to a child enrolled in a preschool educational facility, including those persons individuals who legally stand in place of such a parent, such as including 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.

8. "Staff" means any person individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the facility.
9. "Teacher" means any person individual 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; July 1, 1996.

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 preschool educational facility ~~shall be~~ is evidence of compliance with the standards contained in this chapter.
2. The license ~~shall~~ must be on display in the facility in a conspicuous place.
3. The license ~~shall~~ must specify the maximum number of children who may be cared for in the program, and the program ~~shall~~ must at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 occurs first ~~occurs~~; provided, however, that this subsection shall not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.

3. The department may revoke a license to operate a preschool without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-11-06. Application for a preschool educational facility license. An application for license and issuance by the department shall must be submitted to the county agency in the county wherein the applicant proposes to operate a preschool educational facility. Application shall must be made in the form and manner prescribed by the department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-06.1. Child abuse and neglect determinations. If there exists a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by a caregiver or a preschool child care operator, the individual shall furnish information satisfactory to the department, from which the department can determine the caregiver's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the preschool child care operator and to the regional director of the human service center or the regional director's designee for consideration and action on the preschool child care license.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-11-07. Nontransferability of license. The license shall must be nontransferable and shall must be valid only on such the premises as--are indicated on the license. A new application for a license must be filed by any licensed facility upon change of operator or location.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08. Provisional license.

1. 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 department, may, at the discretion of the regional director of the human service center, or his the regional director's designee, be issued a provisional license.
2. A provisional license shall must:
 - a. Prominently state that the center has failed to comply with all applicable standards and regulations of the 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~~ bears the same date as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license shall may 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 must be accompanied by a written statement of violations signed by the regional director of the human service center and acknowledged by the operator, ~~in writing, -acknowledged-by-the-operator.~~
5. Subject to the exceptions contained in this section, a provisional license entitles ~~its~~ the holder to all the rights and privileges afforded the holder of an unrestricted license.
6. The department shall not issue a provisional license if the facility is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator must prominently display the provisional license.

8. The operator must provide parents with notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 preschool educational facility is responsible to the department for compliance with the 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 preschool educational facility.
 - b. Make application for a license for each preschool educational facility operated, if more than one program is operated.
 - c. Outline a written plan and policies for the operation of each program.
 - d. Notify the 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 The written policies and procedures 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.
 - i. 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.
 - j. Ensure safe care for the children in the facility. If there exists a probable cause determination or a decision that services are required 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~~ individual shall furnish information, satisfactory to the department, from which the department can determine the ~~person's~~ individual's current ability to provide care free of abuse or neglect. The determination of current ability ~~will~~ must be furnished to the operator and to the regional director of the human service center or ~~his~~ the regional director's designee for consideration and action on the license or license application.
 - k. Designate a qualified director.
 - 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~~ developmentally appropriate guidance techniques to be used, and the content of the preschool program.
 - m. Ensure that the facility is sufficiently staffed.
 - n. Ensure that written policies are established which provide for emergency medical care, and the treatment of illness and accident.
 - 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.
 - p. Provide parents with the name of the facility's operator and the director.
 - q. The operator shall develop and follow a procedure for accountability when a child fails to arrive for the program.
4. If the operator of the preschool educational facility is also the director, the operator ~~must~~ shall also meet the qualifications of the director set forth in section 75-03-11-10.
5. The operator shall report to the county director or the county director's designee the death or serious accident or illness

requiring hospitalization of a child who dies, is injured, or becomes seriously ill while in the care of the facility.

6. For each new staff member hired, the operator must submit a self-certification form completed by the new staff member to the department within five working days of the staff member's first day.
7. The operator shall provide information on carecheck to parents.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-10. Minimum qualifications of a director.

1. A 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 the director has met at least one of the following qualifications:
 - 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, preschool educational facility, kindergarten, elementary school, or similar setting;
 - b. 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~~ months of 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 development with at least six ~~months~~ months of 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~~ year of 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 year of 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 year of 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-11. Minimum qualifications of a teacher.

- 1. A 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 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. 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 teacher is also the director, that ~~person~~ individual must meet the qualifications of the director and perform the function of a director as defined in section 75-03-11-10.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 staff and volunteers shall furnish documentation of a negative tuberculosis test prior to the first day of employment.
- 2. All personnel shall certify, within ~~thirty~~ five 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- 3. There shall ~~must~~ 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- 4. If the physical or mental health of a staff member appears questionable, the department may require the employing operator to present evidence of such capabilities based on a formal evaluation. 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 results for licensing purposes. Any costs for evaluations needed are to be borne by the staff member.
- 4- 5. 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~~ shall certify ~~ten~~ thirteen hours of training. Staff working twenty to thirty hours per week ~~must~~ shall certify ~~eight~~ eleven hours of training. Staff working ten to twenty hours a week ~~must~~ shall certify ~~six~~ nine hours of training. Staff working less than ten hours per week ~~must~~ shall certify ~~four~~ seven hours of training.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-14. 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 members to children in preschool educational facilities shall must be:
 - a. Children two years of age to three years of age, one staff member per six children.
 - b. Children three years of age to four years of age, one staff member per eleven children.
 - c. Children four years of age to five years of age, one staff member per thirteen children.
 - d. Children five years of age to six years of age, one staff member per sixteen children.
 - e. Unless otherwise provided in ~~subsection-h~~ subdivision g, there shall must be at least one director or teacher per group of twenty-four children, ages four to six.
 - f. ~~Unless~~ In addition to the staff to child ratios established in subdivisions a through d and unless otherwise provided in subsection-h, there shall subdivision g:
 - (1) There must be at least one director or teacher per group of twenty children, if the group includes three year olds but no younger children; and
 - g= (2) ~~Unless--otherwise--provided--in--subsection-h, there shall~~ There must be at least one director or teacher per group of ten children, if the group includes two year olds and no younger children.
 - h= g. There shall must 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 handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall must be used in determining appropriate staff ratios.
4. Children with special conditions requiring more than usual care and supervision ~~must~~ shall 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 is 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.
6. Children using the licensed facility for a McGruff safe house or block house shall not be counted in the facility's ratio.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1; S.L. 1995, Ch. 505, §§ 1, 2

75-03-11-15. Minimum information for each enrolled child. The following information shall must be kept and maintained in the registration forms for each individual child enrolled in the preschool educational facility and shall must be updated as appropriate. Such The information shall must include:

1. The child's full name, birthdate, and current home address.
2. The names and, addresses, and home and business telephone numbers of the parents or other persons individuals legally responsible for the child; ~~as well as their home and business telephone numbers.~~
3. Names and telephone numbers of persons individuals who can assume responsibility for the child if the persons individuals 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 individuals 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~~ upon 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; July 1, 1996.

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 facility shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall must be in writing. Plans shall must include the conspicuous posting of emergency response procedures.

1. At least one state department of health approved first-aid kit shall must 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~~ facility shall have a telephone immediately accessible to the staff with a list of emergency telephone numbers conspicuously posted adjacent to such the 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~~ for the administration of such medication shall must be given by the parent or physician.
 - a. Any medication prescribed by a physician shall must 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 must be kept in secure storage so that it is out of the reach of children.
 - c. A written record of the administration of medication to each child must be kept. Records must include the time and date of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
4. The director shall maintain at all times at least one staff ~~person member~~ who has a current cardiopulmonary resuscitation certification or department-approved training and first-aid certification or department-approved training effective July 1, 1987 January 1, 1997.
5. A supervised temporary isolation area shall must be provided for a child who becomes ill and cannot remain in the group,

and the following procedures shall must be followed when such those signs or symptoms are observed:

- a. Parents shall be notified immediately and asked to pick up their children.
- b. First aid shall must be provided and medical care shall must be sought, as necessary.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 must be completed by local or state fire authorities with any fees for inspection being the operator's responsibility. Emergency plans shall must be developed in cooperation with such authorities. The operator shall file a written ~~fire/safety~~ fire and safety inspection report and have corrected any code violations noted by the fire inspection with the county agency. The program shall must provide the following as approved by an appropriate fire official:
 - a. Approved smoke detectors placed as directed.
 - b. Fire extinguishers that bear approval ratings for 2A classification or better.
 - c. Emergency exit signs with at least six-inch [15.24-centimeter] stroke letters.
 - d. At least two qualifying exits.
 - e. A ~~boilerroom~~ boiler room 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 must 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 the local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

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 preschool educational facility's bathroom lavatories, toilets, tables, chairs, and floors shall must be cleaned daily.
2. The preschool educational facility's building and equipment shall must be located, cleaned, and maintained to protect the health and safety of children.
3. A preschool educational facility within which food is prepared and served ~~must~~ shall receive an annual health and sanitation inspection by a local, district, or state environmental health practitioner. Reports of such inspections must be filed with the county agency and any problems found must be corrected.
4. Indoor and outdoor equipment and supplies shall must be safe, strong, and in good repair for children.
5. There shall must be adequate ventilation and heating in the facility.
6. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the facility shall must be contained, fenced, or have natural barriers to restrict children from unsafe areas.
7. Hazardous or potentially injurious or poisonous substances shall must be kept in locked storage in a space designed solely for this purpose and shall must be inaccessible to children.
8. Indoor floors and steps shall must not be slippery or have splinters. All steps and walkways shall must be kept free from accumulations of water, ice, or snow.
9. Elevated areas such-as, including stairs or porches shall must have railings and safety gates, where necessary, to prevent falls.
10. All heating devices shall must be approved by the local fire authorities.

11. The operator shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall must not be applied in areas accessible to children when children are present in the facility.
12. Combustible materials shall must be kept away from light bulbs and other heat sources.
13. Doors and pathways shall must not be blocked.
14. All 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 must have such surfaces repainted or shall 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, when measured by a lead-detecting instrument approved by the state department of health and consolidated laboratories.
15. If wading pools are used by the home or facility, their use must be strictly supervised. Wading pools must be cleaned and emptied daily. All swimming pools must be approved by the state department of health division of water supply and pollution control. Operational practices as established by the state department of health must be followed.
16. The standards for pets:
 - a. All pets must be approved by an environmental health practitioner;
 - b. All pets must be properly restricted and maintained;
 - c. The feeding and care of pets must be performed only by nonfood preparation staff; and
 - d. Nondomestic animals such as skunks, opossum, or raccoons are prohibited.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-18.1. Smoke-free environment. In any preschool child care center, smoking is prohibited at any time while a child is receiving care.

History: Effective July 1, 1996.

General Authority: NDCC 23-12-10, 50-11.1-02.2

Law Implemented: NDCC 50-11.1-02.2

75-03-11-19. Minimum requirements regarding space.

1. Each facility shall provide adequate space for all children in attendance.
2. There shall must 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 early childhood facility's purposes shall must not be considered when computing minimum space.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-20. Minimum requirements for facilities and equipment.

1. The facility and all rooms therein shall be properly lighted. The following technical requirements shall must be met:
 - a. Sixty-five foot-candles of light for all general use and play areas.
 - b. Twenty-five foot-candles of light for all bathrooms.
 - c. Fifteen foot-candles of light for corridors and storage areas.
2. Water supply.
 - a. Drinking water shall must be from a source which is approved by the state department of health and ~~consolidated-laboratories~~.
 - b. Drinking water shall must be easily accessible to the children and shall 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 and of sufficient pressure, from an approved community system, must be available in the facility.

3. Toilet and lavatory facilities.

- a. Toilet and lavatory facilities shall must be provided and shall must be convenient to the areas used by the children and staff.
- b. Toilet and lavatory facilities shall must meet requirements of the ~~local--health~~ state department of health authorities.
- c. A minimum of one lavatory and one flush toilet shall must be provided for each fifteen children.
- d. At least one handwashing lavatory shall must be provided per toilet room facility.
- e. Sanitary hand-drying equipment or materials shall must be provided near handwashing lavatories.

History: Effective December 1, 1981; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-22. Minimum preschool educational facility program requirements.

1. A preschool educational program shall must have a written curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.
2. The curriculum shall must promote intellectual, social, emotional, and physical development of children in care.
3. The curriculum shall must be based on the developmental levels and needs of children enrolled.
4. The 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 must be respected by the preschool educational facility's staff.
6. There shall must 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; July 1, 1996.

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 preschool educational program, there shall must 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 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 department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-24. 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--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. 2. 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--may--be--physically--punished--for--lapses--in--toilet training.~~
5. 3. Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or cultural background may not be used or permitted.

6- 4. 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; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-24.1. Punishment prohibited.

1. No child may be physically punished for lapses in toilet training.
2. Deprivation of meals may not be used as a form of discipline.
3. No child may be punched, spanked, shaken, pinched, roughly handled, bitten, or struck with an inanimate object by any caregiver.

History: Effective July 1, 1996.

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 preschool educational program, if the facility provides transportation. Such a policy shall must 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 must 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~~ liability and medical insurance.
 - a. ~~Child/staff~~ Child and staff ratios shall must 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; July 1, 1996.

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 - Correction orders.

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. The department shall require twenty-four hours for correction of a violation of section 75-03-11-14, 75-03-11-24, or 75-03-11-24.1.
 - b. For a violation of deficiency requiring the hiring of a director with those qualifications as set forth in section 75-03-11-10 or a teacher with those qualifications as set forth in section 75-03-11-11, a period of sixty days must be allowed to correct the deficiency ~~shall be allowed~~.
 - ~~b=~~ c. 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 must be allowed to correct the deficiency ~~shall be allowed~~.
 - ~~e=~~ d. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days must be allowed to correct the deficiency ~~shall be allowed~~.
 - ~~d=~~ e. For all other violations or deficiencies, a period of twenty days ~~shall~~ must be allowed to correct the deficiency.
2. All time periods ~~shall~~ must commence with the date of receipt, by the provider, of the correction order.
3. The regional supervisor of 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 operator and upon a

showing that the need for the extension is created by circumstances beyond the control of the operator and that the operator has diligently pursued the correction of the deficiency.

4. The operator shall provide the county agency with written notice of compliance of the correction order action. The correction order must be considered to be effective until the county receives the notice.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11-27. Fiscal sanctions.

1. A violation of section 75-03-11-13, 75-03-11-17, 75-03-11-18, or 75-03-11-19 results in the licensee being assessed a fiscal sanction of twenty-five dollars per day for noncompliance after the allowable time for correction of deficiencies ends.
2. A violation of section 75-03-11-14 results in the licensee being assessed a fiscal sanction of fifteen dollars per day for noncompliance after the allowable time for correction of deficiencies ends.
3. A violation of any other section of this chapter noted in subsection 1 or 2 results in the licensee or registrant being assessed a fiscal sanction of five dollars per day for noncompliance after the allowable time for correction of deficiency ends.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4

75-03-11-28. Appeals. Applicants for a license or holders of a license have the right to appeal a decision to deny or to revoke a license. The appeal must be filed, in writing, with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted, in the manner prescribed by chapter 75-01-03.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-03-11.1

AGENCY SYNOPSIS: In regard to proposed amendments to North Dakota Administrative Code Chapter 75-03-09, Group Child Care Early Childhood Services, North Dakota Administrative Code chapter 75-03-11, Preschool Educational Facilities Early Childhood Services, and North Dakota Administrative Code chapter 75-03-11.1, School Age Child Care Center Early Childhood Services.

The North Department of Human Services proposes amendments to North Dakota Administrative Code Chapter 75-03-09, Group Child Care Early Childhood Services, proposed amendments to North Dakota Administrative Code Chapter 75-03-11, Preschool Educational Facilities Early Childhood Services, and proposed amendments to North Dakota Administrative Code Chapter 75-03-11.1, School Age Child Care Center Early Childhood Services. A public hearing on the rules under consideration was held on October 11, 1995, in Bismarck, and on October 12, 1995, in Fargo. Sixteen oral comments and twenty-one written comments were received.

Chapter 75-03-09 sets forth standards and requirements for group child care facilities and contains nonsubstantive changes to conform the rule's language to present statutory usage. Section 75-03-09-06.1 incorporates new language for the effect of conviction on licensure. Section 75-03-09-06.2 allows the department to make child abuse and neglect determinations. Section 75-03-09-20.1 provides for a smoke free environment. Section 75-03-09-27.1 restricts punishment of children. Section 75-03-09-30 changes the title from penalties to fiscal sanctions. Section 75-03-09-31 adds language with respect to the appeals process.

Chapter 75-03-11 proposes changes to reflect changes in departmental general policy with respect to preschool educational facilities. Section 75-03-11-06.1 incorporates new language for the effect of conviction on licensure. Section 75-03-11-06.2 allows the department to make child abuse and neglect determinations. Section 75-03-11-18.1 provides for a smoke free environment. Section 75-03-11-24.1 restricts punishment of children. Section 75-03-11-27 delineates fiscal sanctions. Section 75-03-11-28 adds language with respect to the appeals process.

Chapter 75-03-11.1 sets forth standards and requirements for school age child care centers and contains nonsubstantive changes to conform the rule's language to present statutory usage. Section 75-03-11.1-27.1 is a new section which restricts punishment of children.

75-03-11.1-01. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the facility.

2. "Caregiver or group leader" means any person whose responsibility is the direct provision of school age child care services in facilities subject to this chapter.
3. "Department" means the North Dakota department of human services.
4. "Director" means any person with the responsibility for overseeing and planning the day-to-day school age child care center activities.
5. "Operator" means the licensee who has the legal responsibility and the administrative authority for the school age child care center.
6. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a school age child care center, including those persons who legally stand in place of such parent, such as legal guardians or custodians.
7. "School age child care center" means the location for adult supervised care of a school age child care program on a regular basis for ~~more-than~~ more nineteen or more children who are usually between the ages of five and twelve years old.
8. "School age child care center satellite" means the location for adult supervised care of a school age child care program on a regular basis for ~~more-than~~ more nineteen or more children who are usually between the ages of five and twelve years old in a building or location used at any time by the program other than the building or location listed as the main location on the license.
9. "School age child care program" means a school age child care center providing school age child care services exclusively to school age children before and after school, during school holidays, and during summer vacation.
10. "Supervisor or site coordinator" means any person with the responsibility for organizing and supervising daily program activities.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11.1-03. Denial or revocation of license.

1. The right to provide school age child care services in a school age child care center is dependent upon compliance with North Dakota Century Code chapter 50-11.1 and the required minimum standards of this chapter.

2. The department may revoke or deny a license to operate a school age child care center under 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 licensee may continue to operate the facility pending the final administrative decision or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
4. The department may revoke a license to operate a group child care center without first issuing a correction order.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-09, 50-11.1-10

75-03-11.1-05. Provisional license.

1. A school age child care center operator who applies 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 department, at the discretion of the regional director of the human service center or the regional director's designee, may be issued a provisional license.
2. A provisional license must:
 - a. Prominently state that the facility has failed to comply with all applicable standards and regulations of the department.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the facility'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 must bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license shall must be issued only to an applicant who, in writing, has 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 must be accompanied by a written statement of violations signed by the regional director of the human service center or the regional director's designee and acknowledged in writing 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.
6. The department may not issue a provisional license if the facility is not in compliance with ~~sections~~ section 75-03-11.1-19 or 75-03-11.1-20.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11.1-06. Licensure standards. A license may not be issued or renewed unless the applicant files a sworn statement upon application showing the following standards:

1. The applicant for licensure has not been found guilty of, pled guilty to, or been released from incarceration or probation for a felony ~~within the last five years.~~
2. The applicant for licensure has not been found guilty of or pled guilty to a felony or an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23, theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-28, gambling and related offenses; 12.1-29, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors. Conviction of violation of other states' statutes which pertain to criminal acts that require the same elements as North Dakota statutes but may have different names must carry the same weight in the licensure decision as does conviction for violation of North Dakota statutes.

3. The applicant shall ensure care for the children receiving services in the applicant's facility. If there exists a probable cause determination or a decision that services are required to provide for the protection and treatment of an abused or neglected child under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19, indicating that any child has been abused or neglected by the applicant, the individual shall furnish information to the department from which the department can determine the applicant's current ability to provide care that is free of abuse or neglect. The determination of ability will be furnished to the operator and to the regional director of the human service center, or designee, for consideration and action on the application. Appeal of departmental determinations are set forth in chapters 75-01-03 and 75-03-18.
4. The applicant must be issued a license, even if the applicant has pled guilty to or been found guilty of a felony or an offense under subsection 1 or 2, if the department determines the felony or offense does not have a direct bearing upon the applicant's ability to serve the public as a school age child care center operator or the department determines the applicant has--been--determined--by--the--department--to--be is sufficiently rehabilitated.
5. ~~The~~ If food is prepared, the premises to be used by the applicant for the school age child care center must meet the local and state ~~requirement~~ requirements regarding sanitation and safety as evidenced by an inspection report of the premises by the local health and fire department and must conform to applicable federal and state statutes.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-11.1-07. Operator standards of conduct.

1. The operator shall establish the school age child care program.
2. The operator shall apply for a license for each school age child care center operated.
3. The operator shall outline a plan of operation for each school age child care center.
4. The operator shall notify the county social service board of any changes in its operation, its ownership, its governing body, and its staff.

5. The operator shall carry liability insurance for bodily injury and property damage for the school age child care center.
6. Written policies and procedures relating to children's activities and care, enrollment, and the responsibilities and rights of staff and parents must be developed by the operator and kept on file at the school age child care center. The personnel policies must include obtaining written references, employment histories, and a method of conducting staff performance evaluations.
7. Enrollment, attendance, health, financial, and other related records as required by statute or rule must be maintained by the operator.
8. The operator is responsible for submitting to the department the self-certification forms for all staff, volunteers, or others who provide services in the school age child care center and shall notify the department of new staff. For each new staff member hired, the operator shall submit a self-certification form completed by the new staff member to the department within five working days of the staff member's first day. The operator shall obtain authorization from each staff member and volunteer for the department to conduct the child abuse and neglect background check.
9. The operator shall maintain information to verify staff qualifications to ensure that care, free of abuse and neglect, is provided to the children in the school age child care center. ~~If a caregiver or employee who has access to children is employed or retained in the school age child care center when there has been a probable cause determination that the individual has abused or neglected a child, the caregiver or employee shall furnish information to the department for use in determining the caregiver or employee'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 human service center director, or the director's designee, for consideration and action on the license or license application.~~
10. The operator shall cooperate with the department and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.
11. The operator shall designate a qualified director. The minimum qualifications for a director are set forth in section 75-03-11.1-08.
 - a. At no time shall a school age child care center be without a director or an acting director.

- b. Any person designated as acting director for an ongoing period of less than thirty days must meet the qualifications of a supervisor under section 75-03-11.1-10.
- c. Any person designated as acting director for an ongoing period of more than thirty days must meet the qualifications of a director under section 75-03-11.1-08.
12. The operator shall inform the parents of enrolled children and other interested parties of the goals, policies, procedures, and content of the school age child care center's program. A written explanation of how accidents and illnesses will be dealt with must be provided as well as methods of discipline and child management techniques to be used. Information relating to service fees and significant changes in the services offered by the school age child care center must also be provided.
13. The operator must provide written notice to the parents and the county social service board of any significant changes in the effective date of the license, services offered, duration, scope, and impact on the school age child care center.
14. The operator shall maintain sufficient staff to provide physical care to each child for the benefit of their social competence, emotional well-being, and intellectual development.
15. The operator shall have qualified caregivers on call to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty. The minimum qualifications for caregivers are set forth in section 75-03-11.1-11.
16. Written agreements with the parents of each enrollee must specify the fees to be paid, the method of payment, and the policy regarding delinquent fees.
17. Written policies must be established by the operator, as described in section 75-03-11.1-17, which provide for emergency medical care; the care of children with special physical, emotional, or mental needs; and the treatment of illness.
18. Written policies must be established by the operator concerning the care and safeguarding of personal belongings brought to the school age child care center by enrollees or others on their behalf.
19. The operator shall provide parents with opportunities to observe the school age child care center at any time children are in care and to discuss their children's needs before

- enrollment. The operator shall regularly offer parents an opportunity to observe their children and to meet with caregivers to advise and comment on their children's needs.
20. Upon request, the operator shall give parents any progress reports on their individual child or children.
 21. The operator shall make provisions for safe arrival and departure of all children that also allow for parent-staff interaction. The operator shall develop a system to ensure that children are released only as authorized by the parent or guardian.
 22. The operator shall develop and follow a procedure for accountability when a child fails to arrive for the program.
 23. The operator shall develop a system to ensure the safety of children whose parents have agreed to allow the children to leave the program without supervision. The system must include written agreements between parents and the operator, and consistent sign-out procedures for released children.
 24. The operator shall report any suspected child abuse or neglect pursuant to North Dakota Century Code chapter 50-25.1 and shall develop a policy for staff to follow when reporting an incident.
 25. The operator shall have a staff member on duty at all times when children are receiving care who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.
 26. The operator shall have at least one staff member with first aid certification or first aid training approved by the department on duty at all times when children are receiving care. This subsection is effective January 1, 1997.
 27. The operator shall comply with the following training requirements:
 - a. The director and supervisors shall furnish documentation of thirteen hours of training annually to the department;
 - b. Caregivers working thirty to forty hours per week shall furnish documentation of thirteen hours of training annually;
 - c. Caregivers working twenty to thirty hours per week shall furnish documentation of eleven hours of training annually;

- d. Caregivers working ten to twenty hours per week shall furnish documentation of nine hours of training annually; or
 - e. Caregivers working less than ten hours per week shall furnish documentation of seven hours of training annually.
28. If the operator of the school age child care center is also the director, the operator shall meet the qualifications of the director under section 75-03-11.1-08.
 29. Caregivers under the age of eighteen and all children in their care shall have adult supervision at all times.
 30. The operator shall report to the county director or the county director's designee the death or serious accident or illness requiring hospitalization of a child who dies, is injured, or becomes seriously ill while in the care of the facility.
 31. Operators shall provide information on carecheck to parents.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03.1, 50-11.1-04(3)

75-03-11.1-08. Minimum qualifications of director.

1. The director shall be an adult in good mental and physical health, capable of mature judgment, and knowledgeable and experienced in management and interpersonal relationships.
2. The director shall furnish documentation of at least one of the following qualifications, in addition to those in subsection 1, being met:
 - a. A bachelor's degree in the field of elementary education with eight weeks of experience in a child care center or similar setting;
 - b. A bachelor's degree with twenty-four semester hours or thirty quarter hours in child development, child psychology or fields directly related to child psychology, and six months of experience in a child care center or similar setting;
 - c. An associate ~~of--arts~~ degree in the field of early childhood development and six ~~months~~ months of experience in a child care center or similar setting;
 - d. A teaching certificate in elementary education with 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, and one ~~year's~~ year of experience in a child care center or similar setting;
- f. A bachelor's degree with twelve semester hours or fifteen quarter hours in child development, child psychology or fields directly related to child psychology, and one ~~year's~~ year of experience in a child care center or similar setting;
- g. Certification as a Montessori teacher with one ~~year's~~ year of experience in a Montessori school, child care center or similar setting, and 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 July 1, 1989, and continuous employment as a director from that time, and at all times subsequent, at the same center; or
- i. A high school diploma with three ~~years'~~ years of experience as a licensed group child care supervisor and three positive reference letters from parents whose children were in the supervisor's care.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-09. Duties of director.

1. The director is responsible for program planning, supervision, and activity.
2. The director shall assist the operator in maintaining enrollment, health, attendance, financial, and other related records as required by this chapter.
3. The director is responsible for scheduling, supervision, and conduct of staff members.
4. The director shall designate a supervisor or onsite coordinator for each school age child care center.
5. The director shall assist the operator in efforts to improve the quality of care and the competence of caregivers.

6. The director shall be present at the center at least sixty percent of the time that the center is open. If the operation has satellite sites, the director shall be present an aggregate of sixty percent of the combined time that the director is present at all sites.

7. The director shall ensure that parents have access to carecheck information.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11.1-10. Minimum qualifications of supervisor or site coordinator.

1. The supervisor or site coordinator shall furnish documentation of compliance with at least one of the following qualifications:
 - a. An associate ~~of--arts~~ degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;
 - b. Certification as a child development associate or similar status where such local, state, or federal certification program exists;
 - c. Certification as a Montessori teacher;
 - d. A high school diploma and one year's year of experience in a child care center or similar setting; or
 - e. High school equivalency and one year's year of experience in a child care center or similar setting.
2. The supervisor or site coordinator shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.
3. The supervisor or site coordinator must be an adult in good mental and physical health so as to be able to provide adequate care for children in a child care center environment.
4. The supervisor or site coordinator must be certified in cardiopulmonary resuscitation by the American heart

association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-13. Minimum health requirements for all caregivers.

1. All Upon employment, all caregivers shall furnish documentation, ~~within five days of employment,~~ that they do not have health problems that would interfere with their functioning as caregivers or endanger the health of the children or other staff. All staff and volunteers shall furnish documentation of a negative tuberculosis test before the first day of employment.
2. If the physical or mental health of the operator, director, supervisor, or any caregiver appears questionable, the department may require the individual to present evidence of such capabilities based on a formal evaluation. If appropriate, the department may 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 June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-14. Staffing requirements.

1. Staff and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and permit flexible groupings where necessary. Service personnel engaged in housekeeping and food preparation are not counted in the children staff to child ratio for periods of time when they are so engaged. 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.
2. Staff ratios.
 - a. The minimum required staff to child ratio is one staff ~~person~~ member per fourteen or less children. With fifteen or more children, two staff ~~persons~~ members are required.

- b. Staff members meeting the qualifications of center director, site coordinator, group leader, assistant group leader, or caregiver over eighteen years of age may be counted in the required ratio only for the time they are directly responsible for a group of children.
 - c. Caregivers under the age of eighteen and all children in care must have adult supervision in the center at all times.
 - d. When more than eight children are taken off premises, the children shall be accompanied by at least two staff ~~persons~~ members, one of whom is qualified group leader or caregiver who is eighteen years old or older. When eight or fewer children are taken off premises, the accompanying staff ~~person~~ member must be a qualified group leader or caregiver who is eighteen years old or older.
3. Children using the licensed facility for a McGruff safe house or block house during an emergency shall not be counted in the facility's ratio.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08; S.L. 1995, Ch. 505, §§ 1, 2

75-03-11.1-15. Minimum standards for enrollee's records.

Information must be kept and maintained in the records concerning each individual child enrolled in the school age child care center and must be updated as appropriate. The information must include:

1. The child's full name, birth date, current home address, name of the school the child attends, and the name of the classroom teacher;
2. A current photo of the child;
3. The names, addresses, and home and business telephone numbers of the parents or other persons legally responsible for the child;
4. The 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;
5. The written consent of a parent or legally responsible party for emergency care, first aid, and emergency transportation;
6. The names and telephone numbers of persons authorized to take the child from the school age child care center;

7. Written documentation that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health; and
8. A ~~licensed health practitioner's statement based upon a health assessment or a~~ health assessment statement completed by the parent must be obtained at the time of initial enrollment of the child. No more than six months must have elapsed between the date the health assessment was completed and the date of initial enrollment. The health assessment statement must indicate any special precautions for diet, medication, or activity. This statement serves as evidence that a child is physically able to take part in the child care program. The statement must be completed annually.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-11.1-17. Minimum provisions regarding emergency care.

1. The school age child care center must have a written policy which addresses all health aspects of the program, including staff responsibilities for emergency and preventive health measures. Each staff member must receive a copy of the policy and must be trained in the implementation of the policy during staff orientation. Parents must be notified of the policy prior to enrollment and must be provided a copy upon request.
2. The school age child care center shall conspicuously post emergency response procedures. All staff members shall receive training concerning emergency procedures. ~~At least one staff member having cardiopulmonary resuscitation certification and a minimum of five hours of first aid training related to the health and safety of young children shall be available at all times. The five hours of training may be applied to the individual's minimum hours of training annually only for the first year of licensing.~~
3. A first-aid kit approved by the state department of health must be maintained and kept in each major activity area so as to be inaccessible to children, yet readily accessible to staff.
4. The school age child care center must have a telephone immediately accessible to the staff with a list of emergency telephone numbers conspicuously posted adjacent to the telephone including fire, police, ambulance, and poison control.
5. The school age child care center shall inform parents in writing of any first aid administered to their child within

twenty-four hours of the incident. Parents must be notified immediately of any injury which requires emergency care beyond first aid. Each injury report must be made a part of the child's record.

6. The school age child care center shall implement infection control measures to prevent the spread of communicable diseases. Regulations and recommendations set by the division of communicable disease control of the state department of health relating to serious illnesses, contagious diseases, and reportable diseases must be followed.
7. When health policies of the school age child care center allow ill children to be admitted or to remain in the school age child care center, medical consultation must be available regarding special care and medication.
8. If children in the school age child care center require medication, the following procedures must be observed:
 - a. Written permission to dispense over-the-counter medication must be obtained from the parents with proper instructions as to the administration of the medicine.
 - b. Medication prescribed by a physician must be accompanied by the physician's written instructions as to its dosage and storage, and labeled with the child's name and dated.
 - c. A written record of the administration of medication to each child must be kept. Records must include the time and date of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
 - d. All medication must be securely kept.
9. A supervised, temporary isolation area must be provided for a child who is too ill to remain in the group or who has an infectious or contagious disease. The following procedures must be followed when such signs or symptoms are observed:
 - a. Parents must be notified immediately.
 - b. First aid must be provided and medical care must be sought, if necessary.
10. A source of emergency health services must be readily available to the center. Provisions must be made to provide emergency transportation. When a child is brought to another place for emergency care, the child must be accompanied by an adult who remains with the child until medical personnel

assume the responsibility for the child's care or until the parent or responsible party arrives.

11. A school age child care center may provide information to parents, as needed, concerning child health and social services available in the community and shall assist parents in obtaining such services.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11.1-20. Minimum sanitation and safety requirements.

1. When food is prepared, the school age child care center shall be annually inspected by an environmental health practitioner for health and sanitation. The inspection report must be filed with the department and any problems found must be timely corrected.
2. The school age child care center's building, grounds, and equipment must be located, cleaned, and maintained to protect the health and safety of children.
3. The school age child care center group 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 used by the school age child care center must be fenced or have natural barriers to protect the children.
5. Garbage must be kept away from areas used by children and kept in noncombustible containers with tight lids. Open burning is prohibited.
6. Wading pools used by the school age child care center must be strictly supervised and must be emptied and cleaned daily. All swimming pools must be approved by the state department of health division of water supply and pollution control. Operational practices as established by the state department of health must be followed.
7. All school age child care 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 that 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 cleaned on a routine basis.
9. Interior floors and steps must not be slippery or have splinters. All exterior 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. Doors and pathways must not be blocked.
12. All light bulbs in areas used by children must be properly shielded or shatterproof.
13. Combustible materials must be kept away from light bulbs and other heat sources.
14. Adequate ventilation, heating, and proper humidity must be maintained. During the heating season when the center is occupied by children, the room temperature must not be less than 68 degrees Fahrenheit [20 degrees Celsius] and not more than 74 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 department.
15. Bathrooms, tables, chairs, and floors must be cleaned daily. Cots and mats must be individually labeled, and cleaned and sanitized weekly. If different children use the same cots or mats, the cots or mats 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 and pillows.
16. Personal items such as combs and toothbrushes must be individually identified and stored in a sanitary manner.
17. 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~~ Medications stored in a refrigerator,--they must be stored collectively in a spillproof container.
18. Caregivers and staff members shall wash their hands before preparing or serving meals, after using toilet facilities, and after any other procedure that contaminates their hands.

19. When food is prepared, served, or stored in a child care center, it must be done in a sanitary and safe manner with sanitary and safe equipment as indicated by the state department of health. The operator shall refrigerate sack lunches as required.
20. Water supply standards.
 - a. Drinking water must be from a source approved by the 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-serve drinking cups;
 - c. Hot and cold running water of sufficient pressure from a system approved by the state department of health must be available; and
 - d. A tempering valve must be provided to control the temperature of hot water supplied to lavatories and bathing facilities not to exceed 120 degrees Fahrenheit [49.2 degrees Celsius].
21. Bathroom facility standards.
 - a. Bathrooms must be provided and convenient to the areas used by the children and staff;
 - b. Bathrooms must meet requirements of the environmental health practitioner;
 - c. With a minimum of one sink and one flush toilet provided per fifteen children, bathrooms must be located in rooms separate from those used for cooking, eating, and sleeping;
 - d. Separate bathrooms with partitions installed to separate toilets must be provided for both boys and girls six years of age and over;
 - e. One handwashing sink or its equivalent must be provided per toilet;
 - f. Sanitary hand drying equipment or materials must be provided near handwashing sink; and
 - g. Safe step stools must be provided to allow standard-sized toilets and sinks to be used by the children.
22. Sewage and wastewater disposal standards.

- a. A school age child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03; and
- b. Any school age child care center not on a municipal or public water supply or wastewater system shall be approved by an environmental health practitioner.

23. Laundry standards.

- a. If the school age child care center provides laundry service for common use linens, towels, or blankets, it must have adequate space and equipment for safe and effective operation;
- b. Soiled linens must be placed in closed containers or hampers during storage and transportation;
- c. In all new or extensively remodeled premises, the handling, sorting, or washing or soiled linen or blankets must take place in a designated area separated from food preparation, serving, and kitchen areas by a permanent partition;
- d. In existing centers where physical separation of laundry and kitchen areas is impractical, procedures must be developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
- e. The sorting of laundry in food preparation, serving, or kitchen areas is prohibited;
- f. The water temperature for washing laundry must be greater than 170 degrees Fahrenheit [77.2 degrees Celsius]; and
- g. If water temperature is less than 170 degrees Fahrenheit [77.2 degrees Celsius], bleach must be used during the rinse cycle to achieve fifty parts per million of available hypochlorite at a temperature of at least 75 degrees Fahrenheit [24 degrees Celsius].

24. Operators shall keep the premises free of insects and rodents, and chemicals for pest control must not be applied in areas accessible to children when children are present:

25. The standards for pets.

- a. All pets must be approved by an environmental health practitioner;
- b. All pets must be properly restricted and maintained;

- c. The feeding and care of pets must be performed only by nonfood preparation staff; and
- d. Nondomestic animals such as skunks, opossum, or raccoons are prohibited.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 23-01-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-27. Discipline.

1. The school age child care center must have a written policy regarding the discipline of children that must be interpreted to staff members before the school age child care center begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature, and may include such measures as diversion, separation from problem situations, talking with the child about the situation, or praise for appropriate behavior.
3. Children may not be subjected to physical harm, fear, or humiliation.
4. ~~Children--may-not-be-punished;-spanked;-shaken;-bitten;-roughly handled;-pinched;-kicked;-or-subjected-to-any--other--physical punishment-or-ridicule.~~
5. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. The child must be within hearing and vision of a staff member, in a safe, lighted, well-ventilated area. Isolation in a locked room, bathroom, closet, or pantry is prohibited.
6. 5. Discipline must not be associated with food, rest, or toileting. ~~Food--may--not--be--denied--to--the--child--as--a disciplinary--measure.---Punishment-for-toileting-accidents-is prohibited.~~
7. 6. Verbal abuse and derogatory remarks are prohibited.
8. 7. Authority to punish discipline cannot be delegated to other children nor shall the center sanction one child punishing another child.

- 9- 8. Disregard of this section or the use of any disciplinary measures that result in physical injury or abuse to any child is grounds for the suspension, denial, or revocation of the school age child care license.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08, 50-11.1-01

Law Implemented: NDCC 50-11.1-08

75-03-11.1-27.1. Punishment prohibited.

1. No child may be physically punished for lapses in toilet training.
2. Deprivation of meals may not be used as a form of discipline.
3. No child may be punched, spanked, shaken, pinched, roughly handled, bitten, or struck with an inanimate object by any caregiver.

History: Effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08

75-03-11.1-28. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing transportation, including emergency procedures, of children to and from the child care center, if the center provides transportation. The policy must specify the transportation provider and the procedure for obtaining parental permission for special field trips and related activities that occur outside the school age child care center. If the school age child care center provides transportation, the operator shall inform the parents of the insurance coverage on the vehicles. Any vehicle used for transporting children must be registered, have liability coverage, be in safe operating condition, and be in compliance with state and local laws.
2. When transportation is provided by a school age child care center, the children shall be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. ~~Children-to-staff~~ Staff to child ratios must be maintained to assure the safety of the children while being transported. The department requires one busdriver per twenty children and one additional person for twenty-one children or more.
 - b. Children cannot be left unattended in a vehicle.

3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must be in compliance with all relevant state and local laws. ~~Child-restraints-and-seatbelts-must-be-used.~~

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-29. Allowable time periods for correction of deficiencies.

1. Deficiencies noted in a correction order must be made according to the following time periods:
 - a. For a violation of section 75-03-11.1-14, subsection 3 of section 75-03-11.1-20, and sections 75-03-11.1-27 and 75-03-11.1-27.1, the department shall require correction within twenty-four hours.
 - b. For a deficiency requiring the hiring of a school age child care center director with those qualifications as set forth in section 75-03-11.1-07 or a child care supervisor with those qualifications as set forth in section 75-03-11.1-09, a period of sixty days to correct the deficiency is allowed.
 - ~~b=~~ c. For a deficiency that requires an inspection by a state fire marshal or local fire department authority under section ~~75-03-11.1-18~~ 75-03-11.1-19, a period of sixty days to correct the deficiency is allowed.
 - ~~e=~~ d. For a deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency is allowed.
 - ~~d=~~ e. For all other deficiencies, a period of twenty days is allowed to correct the deficiency.
2. All time periods must commence with the date of receipt by the licensee of the correction order.
3. The regional supervisor of early childhood program licensing shall have the authority to grant extensions of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted, to correct the deficiency. These extensions may be granted upon application by the licensee upon a showing that the need for the extension is created by unforeseeable circumstances and that the licensee has diligently pursued the correction of the deficiency.

4. The operator shall provide the county agency with written notice of compliance of the correction order action. The correction order must be considered to be effective until the county receives the notice.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11.1-30. Fiscal sanctions.

1. A violation of subsections 3, 12, and 18 of section ~~75-03-11.1-19~~ 75-03-11.1-20; subsection 2 of section ~~75-03-11.1-20~~ 75-03-11.1-21; and section ~~75-03-11.1-26~~ 75-03-11.1-27 results in the licensee being assessed a fiscal sanction of twenty-five dollars per day for noncompliance after the allowable time for correction of deficiencies ends.
2. A violation of section ~~75-03-11.1-06~~ 75-03-11.1-07, subsections 1, 2, 4, 5, 10, 16, and 19 of section ~~75-03-11.1-19~~ 75-03-11.1-20; subsection 1 of section ~~75-03-11.1-20~~ 75-03-11.1-21; subsections 3 and 10 of section ~~75-03-11.1-23~~ 75-03-11.1-24; subdivision a of subsection 1 of section ~~75-03-11.1-24~~ 75-03-11.1-25; and ~~section sections~~ 75-03-11.1-27 and 75-03-11.1-27.1 results in the licensee being assessed a fiscal sanction of fifteen dollars per day for noncompliance after the allowable time for correction of deficiencies ends.
3. A violation of any other section of this chapter not noted in subsection 1 or 2 results in the licensee or registrant being assessed a fiscal sanction of five dollars per day for noncompliance after the allowable time for correction of deficiency ends.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4

75-03-11.1-32. Appeals. Applicants for a license or holders of a license have the right to appeal a decision to deny or to revoke a license, ~~or to reject a corrective action plan.~~ The appeal must be filed in writing with ~~the division of~~ the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, the department shall conduct an administrative hearing in the manner prescribed by chapter 75-01-03.

History: Effective June 1, 1995; amended effective July 1, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-04-01

AGENCY SYNOPSIS: A public hearing was conducted on February 7, 1996, in Bismarck, North Dakota, concerning proposed amendments to North Dakota Administrative Code chapter 75-04-01, Licensing of Programs and Services for Individuals with Developmental Disabilities, specifically amending subsection 1 of section 75-04-01-17, concerning identification of basic services subject to licensure, and creating a new section 75-04-01-39, Variance, allowing a variance to be granted to institutional intermediate care facilities for the mentally retarded. These amendments allow the Anne Carlsen Center for Children to qualify for licensure as an intermediate care facility for the mentally retarded.

75-04-01-17. Identification of basic services subject to licensure. Services provided to more than four individuals with developmental disabilities in treatment or care centers must be identified and licensed by the following titles:

1. Residential services:
 - a. Individualized supported living arrangement;
 - b. ~~Intermediate~~ Community intermediate care facility for the mentally retarded of fifteen beds or less;
 - c. Institutional intermediate care facility for the mentally retarded of sixteen or more beds;
 - d. Minimally supervised living arrangement;
 - d- ~~e.~~ Transitional community living facility;
 - e- ~~f.~~ Supported living arrangement;
 - f- ~~g.~~ Family support services; or
 - g- ~~h.~~ Congregate care.
2. Day services:
 - a. Developmental day activity;
 - b. Developmental work activity;
 - c. Extended service;
 - d. Infant development; or

e. Adult day care.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996.

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

Law Implemented: NDCC 25-16-06

75-04-01-39. Variance. Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance, to an institutional intermediate care facility for the mentally retarded, from subsection 1 of section 75-04-01-27, subsections 1, 2, and 3 of section 75-04-01-29, and subsection 3 of section 75-04-01-31, except no variance may permit or authorize a danger to the health or safety of an individual served by the facility.

History: Effective July 1, 1996.

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

Law Implemented: NDCC 25-16-06

TITLE 97
Counselor Examiners, Board of

AUGUST 1996

STAFF COMMENT: Chapter 97-02-01.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 97-02-01.1
LICENSED PROFESSIONAL CLINICAL COUNSELOR**

Section	
97-02-01.1-01	Requirements to Become a Licensed Professional Clinical Counselor
97-02-01.1-02	Renewal of a Licensed Professional Clinical Counselor License
97-02-01.1-03	Reciprocity
97-02-01.1-04	Fees
97-02-01.1-05	Grandparenting Provisions

97-02-01.1-01. Requirements to become a licensed professional clinical counselor. For an applicant to become a licensed professional clinical counselor, the individual must be a licensed professional counselor under North Dakota Century Code chapter 43-47 and:

1. Have at least a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
2. Have sixty semester graduate hours, twelve of which may be obtained in documented training or clinical experience or courses consistent with national board for certified counselors guidelines for the clinical mental health counselor certification. A minimum of fifteen contact hours in each of

the following three coursework categories must be included within the sixty semester credits required for the licensed professional clinical counselor. The three categories are:

- a. Abnormal psychology and psychopathology;
 - b. Appraisal and diagnostic evaluation; and
 - c. Clinical counseling skills;
3. Have two years of post-master's clinical experience, including:
- a. Eight hundred hours of clinical training in supervised practica and internships in settings relevant to the practice of clinical counseling. These hours may be within the required sixty graduate semester hours.
 - b. Two years (three thousand hours) of post-master's clinical experience in a clinical setting. This must include one hundred hours of face-to-face supervision (a minimum of sixty hours of individual supervision) by a board-approved supervisor. The supervisor must be a licensed professional clinical counselor, psychiatrist, clinical psychologist, or other qualified professional;
4. Provide three professional letters of reference. One must be from the post-master's clinical supervisor. The other two must be from professionals familiar with the applicant's clinical experience;
5. Have passed the clinical mental health counseling examination as offered by the national board for certified counseling; and
6. Provide a demonstration of clinical skills in a videotaped counseling session of no less than thirty minutes duration. This tape may involve either individual or group settings.

History: Effective August 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-06.1

97-02-01.1-02. Renewal of a licensed professional clinical counselor license. The licensed professional clinical counselor license must be renewed every two years on the expiration date of the individual's licensed professional counselor license. In addition to the thirty contact hours required for renewal of the licensed professional counselor license, ten additional hours of clinical

professional development are required. These contact hours must be related to the person's intent to practice and must be preapproved by the board.

History: Effective August 1, 1996.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-47-06.1

97-02-01.1-03. Reciprocity. An applicant may be granted reciprocity upon satisfactory proof to the board that the applicant is currently licensed as a licensed professional clinical counselor under the laws of a state or territory of the United States that imposes requirements equal to or more stringent than this chapter.

History: Effective August 1, 1996.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-47-06.1

97-02-01.1-04. Fees. The following fees have been established by the board for the licensed professional clinical counselor license:

1. Application fee, one hundred dollars.
2. Renewal fee, twenty dollars.

History: Effective August 1, 1996.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-47-06.1

97-02-01.1-05. Grandparenting provisions. The board shall issue, upon the application submitted prior to December 31, 1997, a license as a licensed professional clinical counselor, if the applicant satisfies subsection 1 or 2:

1. The applicant is currently licensed in this state as a licensed professional counselor; and
 - a. Provides documentation of at least two thousand clinical contact hours within four of the last seven years. Supervision of counselors or counseling students may be included in contact hours provided the supervisor has written documented past clinical experience;
 - b. Provides written verification of clinical practice by a supervisor or other clinical mental health professional; and
 - c. Provides documentation of at least one hundred hours of clinical supervision. The clinical supervision may be obtained within any two-year post-master's period, as

collegial documented supervision within the last seven years, or a combination thereof.

2. The applicant is currently licensed in this state as a licensed professional counselor and provides proof of clinical mental health certification by the national board for certified counselors.

History: Effective August 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-06.1

TITLE 99
State Gaming Commission

AUGUST 1996

ARTICLE 99-01.1

GAMES OF CHANCE

[Repealed effective August 1, 1996]

STAFF COMMENT: Article 99-01.2 contains all new material but is not underscored so as to improve readability.

ARTICLE 99-01.2

GAMES OF CHANCE

Chapter

99-01.2-01	Organization Licenses and Local Permits
99-01.2-02	General Rules
99-01.2-03	Accounting Rules
99-01.2-04	Bingo
99-01.2-05	Raffles
99-01.2-06	Pull Tabs, Club Special, Tip Board, Seal Board, Coin Board, and Punchboard
99-01.2-07	Sports Pools
99-01.2-08	Twenty-One
99-01.2-09	Poker
99-01.2-10	Calcuttas
99-01.2-11	Paddlewheels
99-01.2-12	Pull Tab Dispensing Devices
99-01.2-13	Bingo Card Dispensing Devices
99-01.2-14	Eligible Uses
99-01.2-15	Distributors
99-01.2-16	Manufacturers of Pull Tabs, Paper Bingo Cards, and Pull Tab and Bingo Card Dispensing Devices

CHAPTER 99-01.2-01

ORGANIZATION LICENSES AND LOCAL PERMITS

Section

99-01.2-01-01	Ineligible Organizations
99-01.2-01-02	Site Authorization
99-01.2-01-03	License
99-01.2-01-04	Reporting a Change in Information
99-01.2-01-05	Local Permit

99-01.2-01-01. Ineligible organizations. An organization is ineligible for a license or local permit if its primary purpose is to conduct those games or, the organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.2-03-05. An organization may not be issued a local permit if it was convicted of violating article 99-01.1 as it was in effect prior to its repeal and replacement by article 99-01.2, this article, or North Dakota Century Code chapter 12.1-28 or 53-06.1. Except for an educational organization, a county, city, state, political subdivision,

or federal entity is not eligible for a license or local permit. A public-spirited organization is generally not a nonprofit social, hobby, trade, business, professional, or other similar club or association unless the organization's primary purpose is to promote, develop, or provide a public service or program.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-16.2, 53-06.1-17

99-01.2-01-02. Site authorization.

1. An eligible organization shall obtain a site authorization for a site within a city or county from the governing body of that city or county. A separate site authorization is required for each site. A site authorization is issued by a governing body and approved by the attorney general. It may be issued for a site located on public or private property and may be restricted. Restrictions may include types of games, days of the week, and designation of an area at a site where games will be conducted. An organization shall comply with a restriction of a site authorization until an amended site authorization is issued by a governing body and approved by the attorney general. A site authorization must describe the specific location where games may be conducted. A governing body may revoke or suspend a site authorization based on good cause.
2. A governing body may issue a site authorization to two or more organizations to conduct games at the same site if the site authorizations restrict the organizations to different days of the week. However, more than one organization may be issued a site authorization for a fairground or similar open space of land.
3. For an initial application for a site authorization for an organization that desires to be recognized as a public-spirited organization, a governing body of a city or county shall determine whether the organization qualifies by examining:
 - a. A copy of an organization's articles of incorporation, charter, bylaws, or similar document to determine its primary purpose and date of origin; and
 - b. A copy of an organization's statements of revenues and expenses for the two preceding years to determine whether the primary purpose has been achieved within this state for both years. A governing body shall examine a copy of the minutes of a board of director's meeting which must include a resolution that states the intended use of net proceeds. An organization's financial officer or

president shall attest to the accuracy of this information.

4. If a special event is held which does not exceed fourteen days, if no more than two events are held per quarter, if written approval is granted by a local governing body, and if the monthly rent amount does not increase, an organization may temporarily use more twenty-one tables at a site than a site authorization allows.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-01-03. License.

1. An organization may not conduct games at a site unless a site authorization is approved by the attorney general and it receives from the attorney general a license for that city or county. If the attorney general determines that a local governing body has not adequately examined an organization that is applying as a public-spirited organization or that the organization's actual primary purpose is different from the purpose stated in its articles of incorporation, the attorney general shall deny the application or revoke the license.
2. An application must include information prescribed by the attorney general and is subject to approval by the attorney general. A license is effective for one year beginning July first and ending June thirtieth.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-01-04. Reporting a change in information. If information on a site authorization or license application that is filed with the attorney general becomes inaccurate or outdated in a material way, an organization shall provide the attorney general, in writing, items of change and a copy of any new documents within fourteen days following the change. This rule does not apply to restrictions of a site authorization or an amended rental agreement which must be provided to the attorney general according to subsection 4 of section 99-01.2-02-12.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-01-05. Local permit.

1. A local permit is issued by a city or county governing body. It may be issued for a site located on public or private property and may be restricted. Restrictions may include types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a local permit based on good cause.
2. A local permit is required for each site at which games have been authorized. An organization may be issued two or more local permits at the same time; however, the award of prizes, in the aggregate, may not exceed six thousand dollars per year.
3. When a governing body issues a local permit, it shall assign a local permit number, specify the period which it is effective, and send a copy of it to the attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a local permit.
4. An organization may receive one or more local permits to conduct bingo, raffles, and or sports pools from a city or county governing body during a fiscal year July first to June thirtieth. However, for a calendar year raffle, a local permit may be issued for a calendar year January first to December thirty-first. The maximum primary and aggregate merchandise and cash prizes must be according to the gaming law. A donated merchandise prize is valued at its retail price when it is acquired.
5. If an organization conducts bingo involving a bingo card dispensing device, it shall comply with sections 99-01.2-13-01 through 99-01.2-13-04. Otherwise, for bingo an organization shall comply with sections 99-01.2-04-01 through 99-01.2-04-03. For a raffle, an organization shall comply with sections 99-01.2-05-01 through 99-01.2-05-06. For a sports pool, an organization shall comply with section 99-01.2-07-01.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

**CHAPTER 99-01.2-02
GENERAL RULES**

Section	
99-01.2-02-01	Definitions
99-01.2-02-02	Request for a Record Check and Fee
99-01.2-02-03	Exempt Persons
99-01.2-02-04	Record Check and Employee Eligibility
99-01.2-02-05	Identification Tag
99-01.2-02-06	Rules and Policy Manual
99-01.2-02-07	Notification to a Governing Board and Membership
99-01.2-02-08	Equipment Acquisitions and Use
99-01.2-02-09	Promotions and Door Prize
99-01.2-02-10	Lessor and Organization - Restrictions
99-01.2-02-11	Lessor Prohibited From Having and a Person Prohibited From Playing Games
99-01.2-02-12	Rental Agreement
99-01.2-02-13	Shift Manager and Reporting Violations
99-01.2-02-14	Gaming Manager For Two or More Organizations and Notification of Change
99-01.2-02-15	Age Limitation
99-01.2-02-16	Currency of Play, Credit Play, and Borrowing From Gaming Funds
99-01.2-02-17	Employees, Volunteers, Bar Employees, and Players Restricted From Playing Games
99-01.2-02-18	Inside Information Prohibited
99-01.2-02-19	Waiver of a Rule
99-01.2-02-20	Orientation and Acknowledgment of the Gaming Law and Rules
99-01.2-02-21	Return of License, Site Authorization, and Disposal of Games
99-01.2-02-22	Independent Contractor and Interorganization Functions Restricted
99-01.2-02-23	Audit and Inspection of Facilities and Records
99-01.2-02-24	Denial, Suspension, or Revocation of a License

99-01.2-02-01. Definitions. As used in this article:

1. "Attorney general" includes an agent of the attorney general.
2. "Bar" means retail alcoholic beverage establishment.
3. "Bar employee" is a person, employed by a bar, that is not operated by a licensed fraternal or veterans' organization, who redeems winning pull tabs or bingo cards, or both, involving a dispensing device for an organization.
4. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.

5. "Cash prize" means coin, currency, marketable security, and any other similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion or a merchandise gift certificate. The value of a marketable security is its cost.
6. "Cash profit" means:
 - a. For bingo, excluding a dispensing device, total ending cash on hand, less starting cash on hand and prizes paid by check, for a bingo session.
 - b. For a raffle, total receipts less prizes paid by cash and check.
 - c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.
 - d. For a commingled game of pull tabs and bingo involving a dispensing device, total currency withdrawn from a dispensing device, less the value of daubers sold, credits paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.
 - e. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.
 - f. For a coin board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost of coins, for the game.
 - g. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.
 - h. For twenty-one, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.
 - i. For poker, total ending cash on hand, less starting cash on hand, for a day's activity.
 - j. For calcuttas, total ending cash on hand, less starting cash on hand and prizes paid by check, for the event.
 - k. For paddlewheels described by subsection 1 of section 99-01.2-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.

1. For paddlewheels described by subsection 2 of section 99-01.2-11-01, total ending cash on hand, plus drop box cash, less starting cash on hand and prizes paid by check, for a day's activity.
7. "Conduct of games" means the direct operation of a game on a site.
8. "Deal" in pull tabs means each box or bag or series of boxes or bags containing one game with the same serial number. "Deal" in bingo means each box of bingo cards, regardless of the serial number.
9. "Employee", except in applying sections 99-01.2-02-02, 99-01.2-02-04, and 99-01.2-02-17, includes a person who conducts games for compensation and a volunteer.
10. "Flare" refers to a flare, master flare, or prize flare:
 - a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, coin board, seal board, and deal of bingo cards involving a dispensing device. The flare for a punchboard is its face sheet. The flare for a sports-pool board, calcutta board, coin board, club special, tip board, and seal board is the game board.
 - b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 1 of section 99-01.2-11-02 and subsection 3 of section 99-01.2-11-08.
 - c. Prize flare. A prize flare is a posted display which describes a winning bingo pattern and prize amount involving bingo cards used in a dispensing device.
11. "Gaming equipment" means a game piece or device specifically designed for use in conducting games. The term excludes fill and credit slips and a bingo dauber.
12. "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in

twenty-one, number under the tape of a sports-pool board, or number under a seal.

13. "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, and volume of activity.
14. "Volunteer" is a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail value of fifteen dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-02. Request for a record check and fee.

1. Unless a person is exempt by section 99-01.2-02-03, an organization or distributor may not employ the person as an "employee" until the organization or distributor has initiated a criminal history record check on the person, or the person has independently requested a record check from the bureau of criminal investigation within one year prior to employment. However, an organization or distributor may temporarily employ a person pending a record check.
2. An organization or distributor shall initiate a criminal history record check of a person by submitting a "request for record check" form to the attorney general within fourteen days from when the person begins temporary employment. If a fingerprint card or special authorization form, or both, are necessary, an organization or distributor shall request this card or form, or both, from the attorney general and submit it with the "request for a record check" form or submit it to the attorney general within ten days from when this card or form, or both, are received from the attorney general. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of a "report of arrest and prosecution", to an organization or distributor which requested the record check.
3. If a person is not employed or does not have a written promise of employment from an organization or distributor and desires a record check, the person may independently request a record check from the bureau of criminal investigation according to

North Dakota Century Code section 12-60-16.6. If a person has requested a record check from the bureau, the person shall provide an organization or distributor with a copy of the bureau's letter on whether a criminal record was found or a copy of a "report of arrest and prosecution". An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 7 of North Dakota Century Code section 53-06.1-06. An organization or distributor shall provide a copy of the bureau's letter or report to the attorney general.

4. For the purpose of this section, the definition of an "employee" is:
 - a. A person who, directly or indirectly, operates games on a site;
 - b. A person who is a shift or gaming manager;
 - c. A person who is employed by a bar that is not operated by a licensed fraternal or veterans' organization, and who is authorized by an organization under subsection 3 of section 99-01.2-12-02 or subsection 3 of section 99-01.2-13-02 to withdraw currency or a drop box from a pull tab or bingo card dispensing device;
 - d. A person who places a deal of pull tabs or bingo cards in a dispensing device, removes currency from the device, or reimburses a bar for redeemed pull tabs or bingo cards;
 - e. A person who is a member of a twenty-one drop box cash count team; or
 - f. A person who directly sells or distributes gaming equipment for a distributor.
5. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.
6. The fee for a record check is twenty dollars and must be remitted by an organization, distributor, or person with the request form. The attorney general may require advance payment of an estimated additional fee necessary to defray the actual cost of a record check of a person for whom an adequate

record information source is not available, including for a person who has not resided in North Dakota for the previous twelve months. The twenty dollar fee is not refundable.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-03. Exempt persons. These persons do not need a criminal history record check:

1. A volunteer, regardless of the volunteer's job duties;
2. A person who only conducts a raffle or sports pool, or both;
3. A person employed by an organization that conducts games on no more than fourteen days during a calendar year;
4. A person who is sixteen or seventeen years of age;
5. A person who has a valid (not expired) work permit issued prior to June 1, 1995;
6. A person who has an expired work permit issued prior to June 1, 1995, and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired; or
7. A person who has had a record check done on or after June 1, 1995, and has, within one year of the record check, become employed by a different organization or distributor than the person was employed by when the record check was done, and who provides the notification copy of a "request for record check" form and, if applicable, a copy of a "report of arrest and prosecution", to the new employing organization or distributor.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-04. Record check and employee eligibility.

1. The attorney general shall do a criminal history record check and provide a copy of the "request for record check" form to an organization or distributor which requested the record check and the person on whom the record check was done. This copy must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor and person with a copy of a "report of arrest and prosecution". An

organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 7 of North Dakota Century Code section 53-06.1-06.

2. If a person is not eligible for employment but has been temporarily employed pending a record check, an organization or distributor, within five days of receiving the copy of the "request for record check" form, shall terminate the person's employment. This period cannot be extended.
3. An organization or distributor shall retain the copy of a "request for record check" form for one year from the end of the month in which a person voluntarily separated from employment, a person was involuntarily separated from temporary employment due to a disqualifying criminal record, or the organization or distributor received the copy and a person had not been temporarily employed pending a record check.
4. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 7 of North Dakota Century Code section 53-06.1-06, the person must immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment and notify the attorney general on a form prescribed by the general attorney.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-05. Identification tag. An employee shall wear an identification tag while working in the gaming area of a site. The tag must clearly display a person's first name and first initial of the last name or the person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide a tag to a person and is equally responsible with the person that the tag is properly displayed. However, if a person has a valid (not expired) state work permit, the person may wear the work permit instead of the tag.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-06. Rules and policy manual.

1. An organization shall have sections of the gaming law prescribed by the attorney general; chapter 99-01.2-02, general rules; chapter 99-01.2-03, accounting rules; and the rules chapter of each game type conducted at a site available for review by any person.
2. An organization shall have a policy manual on its conduct and play of games at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include the internal controls.
3. An organization shall maintain a list of all employees on a site including their name, address, and telephone number. The list must be available to the attorney general and law enforcement officials.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-07. Notification to a governing board and membership.

1. An organization's top official shall provide to the governing board and membership in writing each quarter information on an organization's adjusted gross proceeds; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and eligible uses. This information and how it was provided must be included in an organization's records.
2. If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board and membership, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-08. Equipment acquisitions and use.

1. An organization shall procure gaming equipment only from a distributor. However, an organization may:
 - a. Buy raffle tickets from a printer;

- b. Buy, sell, rent, lend, or give a used jar bar, twenty-one or poker table from or to any organization or person;
 - c. Buy or sell a used pull tab or bingo card dispensing device from or to a distributor or another organization provided that a distributor records the transaction on a sales invoice; or
 - d. Rent, lend, or give its used bingo hard cards, bingo machine, flashboard, dealing shoe, discard holder, chip tray, paddlewheel, paddlewheel table, chips that have been distinctively defaced, or playing cards to any organization or person.
2. An organization may not use or knowingly permit its gaming equipment to be used for an illegal purpose.
 3. An organization or an employee may not conduct or be in possession of a deal of pull tabs or bingo cards, club special, tip board, seal board, coin board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards unless its flare has a gaming stamp.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-14, 53-06.1-17

99-01.2-02-09. Promotions and door prize.

1. An organization, employee, or bar may not, directly or indirectly, give a free game, alcoholic drink, or twenty-one, poker, or paddlewheel chip to a person to play a game or as a prize in a game.
2. An organization or employee may not award a door prize unless:
 - a. No payment, service, or purchase is required of a person to be eligible.
 - b. No door prize may be a game piece or be based on a ticket for a meal, dance, or other activity;
 - c. Participation is open to any person at a site; and
 - d. No purchased ticket references a door prize drawing.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-10. Lessor and organization - Restrictions.

1. Except as prohibited by subdivision d of subsection 3, a lessor's oncall, temporary or permanent employee may not, directly or indirectly, conduct games at a site as an organization employee on the same day the person is working in the area of the bar where alcoholic beverages are dispensed or consumed.
2. No game may be directly operated as part of a lessor's business. However, a lessor may donate a gift certificate or cash or merchandise prize, but not a dispensed alcoholic drink, to an organization.
3. A lessor, lessor's spouse, lessor's common household member, management, management's spouse, officer, board of director, or, an employee or agent of the lessor who approved the lease, may not:
 - a. Be an officer or board member of an organization unless the person is involved in an organization activity that is not a conflict of interest with gaming;
 - b. Have a direct or indirect financial interest in or loan money to an organization;
 - c. Interfere with or attempt to influence an organization's disbursement of net proceeds. However, a lessor may recommend an eligible use;
 - d. Directly or indirectly conduct or play games at the site. Refer to the definition of "bar employee" for an exception to this rule;
 - e. Require an organization's employee to assist, for or without compensation, in a lessor's business at the site. However, an employee may voluntarily order drinks for customers; or
 - f. Station an automated teller machine or any other electronic device that provides a person with a cash advance or withdrawal in the gaming area.
4. Unless an organization or its employee has first received approval from the attorney general or an employee patronizes a lessor in the normal course of a lessor's business, the organization or its employee may not buy a gift certificate or merchandise as a gaming prize from a lessor, or buy

merchandise, food, or alcoholic or nonalcoholic drinks for the lessor's employees or patrons.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-11. Lessor prohibited from having and a person prohibited from playing games. The attorney general may prohibit a lessor from having games conducted at a site and may prohibit a person from playing games if the lessor or person has prior activities, criminal record, or associations that pose a threat to the public interest or the effective regulation of gaming, or create or enhance unsuitable, unfair, or illegal practices.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-12. Rental agreement.

1. If an organization conducts games at a leased site, it shall have a rental agreement signed by authorized persons of both parties.
2. An agreement must contain:
 - a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed three years;
 - b. Monetary consideration;
 - c. The inclusion of this statement with proper selections made:

"The lessor agrees that, except for a bar employee who redeems winning pull tabs or bingo cards involving a dispensing device on behalf of an organization, the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, officers, board of directors, and an employee of the lessor who is in a position to approve or deny a lease may not, directly or indirectly, conduct or play games at the site";
 - d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs or bingo cards involving a dispensing device, a statement that the lessor

agrees to repay the loan immediately when the organization discontinues using a device at the site; and

e. Statements that:

- (1) Bingo is or is not the primary game conducted;
- (2) Twenty-one or paddlewheels, or both, involving a playing table, is or is not conducted and the number of tables on which the rent is based;
- (3) Pull tabs is or is not conducted;
- (4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked; and
- (5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.2-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

3. Rent must be a fixed dollar amount per month.

- a. A participatory or graduated rate arrangement is prohibited.
- b. If bingo is the primary game, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air conditioning and heating, to a vendor.
- c. If bingo is not the primary game, the maximum monthly rent must be according to North Dakota Century Code sections 53-06.1-03.2 and 53-06.1-03.3. Special considerations are:
 - (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table, and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by North Dakota Century Code sections 53-06.1-03.2 and 53-06.1-03.3; and

- (2) If poker is conducted with twenty-one, paddle wheels, or pull tabs, no additional rent is allowed. Otherwise, the rent for poker must be reasonable.
- d. Except for applying subsection 3 or 4 of section 99-01.2-03-04, an organization or employee may not pay, nor may a lessor accept, any additional rent or expense from any source directly or indirectly for any other purpose, such as office or storage space, snow removal, maintenance, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements. Unless an organization or its employee has first received approval from the attorney general or an employee patronizes a lessor in the normal course of a lessor's business, the organization or its employees may not buy a gift certificate or merchandise as a gaming prize from the lessor or buy merchandise, food, or alcoholic or nonalcoholic drinks for the lessor's employees or patrons.
4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy of it provided to the attorney general fourteen days before its effective date.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-06, 53-06.1-07.4, 53-06.1-17

99-01.2-02-13. Shift manager and reporting violations.

1. An organization shall designate an employee at a site as a shift manager for each shift of each day. A shift manager is a person who regularly manages games and ensures compliance with the gaming law and rules by an employee, lessor, and players.
2. An organization, distributor, or shift manager shall immediately report any material violation of the gaming law and rules and any burglary, vandalism, or attempted tampering of gaming equipment to the attorney general or a local law enforcement agency.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-14. Gaming manager for two or more organizations and notification of change. An organization shall designate a person as the gaming manager. A gaming manager is a person who manages and controls

the overall gaming operation. A person may be a gaming manager for two or more organizations at the same time if each organization had total adjusted gross proceeds for the previous year ended June thirtieth of one hundred thousand dollars or less. When the gaming manager changes, an organization shall notify the attorney general on a prescribed form.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-15. Age limitation. A person under the age of twenty-one may not conduct or play games, except bingo and raffles, and, at an alcoholic beverage establishment, may not be a member of a drop box cash count team. A person under the age of sixteen may not conduct bingo. A person of any age may sell raffle tickets.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-16. Currency of play, credit play, and borrowing from gaming funds.

1. Play of a game must be in United States currency. Play of a game must be on a cash basis. An organization may, by policy, accept checks. No credit may be extended to a player. The consideration to play a game must be collected before play. An employee may not loan money to a player, accept a postdated check, allow a player to alter a check, permit a player to establish an account by depositing cash for making periodic withdrawals, or any similar practice. An organization may allow a player to buy back a check with cash and may return a player's check to the player as part of a prize payout but may not unnecessarily delay the bank deposit of that check.
2. An organization may not station or allow to be stationed an automated teller machine or any other device that provides a person with a cash advance or withdrawal in the gaming area.
3. An employee may not borrow gaming funds as a personal loan or substitute a personal check for gaming funds.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-17. Employees, volunteers, bar employees, and players restricted from playing games.

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee or volunteer who services a pull tab or bingo card dispensing device may not play the device at the site where the employee or volunteer services the device.
2. An employee or volunteer may not play bingo not involving a dispensing device, raffles, seal boards, sports pools, calcuttas, poker, and paddlewheels while on duty. However, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may play bingo not involving a dispensing device while on duty.
3. An employee or volunteer may not play pull tabs, tip boards, club specials, or coin boards while on duty and until after three hours of active play have occurred, or two deals have been added to a game of pull tabs, since the employee or volunteer went off duty. "Active" play means that a game has been available for play.
4. An employee may not play twenty-one while off duty unless a table has a video surveillance system. A volunteer may not play twenty-one while on duty.
5. A bar employee may not play bingo or pull tabs, which involve a dispensing device, while on duty. A bar employee may play bingo involving a device while off duty, and may play pull tabs involving a device while off duty after three hours of active play have occurred since the bar employee went off duty, unless otherwise prohibited by subdivision d of subsection 3 of section 99-01.2-02-10.
6. An employee, volunteer, or bar employee taking a temporary break is still considered on duty.
7. If an organization allows an employee or volunteer to play games at its site, it shall post the policy at that site.
8. A shift manager may not permit and an employee and volunteer may not allow an employee's or volunteer's common household member, spouse, child, parent, brother, sister, or in-laws, at a site, to:
 - a. Play pull tabs of a game while the employee or volunteer is on duty as a jar operator for that game, regardless if the employee or volunteer takes a temporary break or rotates to conduct another game; or

- b. Play twenty-one or paddlewheels at a table when the employee or volunteer is dealing or is a wheel operator at that table.
9. An organization may prohibit a person from playing games at a site if it believes the person may pose a threat to an employee, public interest, effective regulation of gaming, or may create or enhance unsuitable, unfair, or illegal practices.
10. This section also applies to a licensed simulcast employee. An organization may adopt a policy that is more restrictive than this section.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-02-18. Inside information prohibited. An employee or a bar employee may not provide inside information of a game to any person.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-02-19. Waiver of a rule. The attorney general may waive a rule when it is for the best interest of the public, organization, distributor, manufacturer, or alcoholic beverage establishment.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-02-20. Orientation and acknowledgment of the gaming law and rules.

1. An organization, within ninety days of starting gaming, and a gaming manager or bookkeeper, or both, who have no previous gaming related experience as a gaming manager or bookkeeper, or both, within ninety days of starting employment, shall request orientation from the attorney general. The orientation must include the gaming law and rules, recordkeeping, internal control, and tax return.
2. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The attorney general shall designate the provisions to be read. The acknowledgment must be dated,

reference the provisions, and be part of the person's personnel file.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-21. Return of license, site authorization, and disposal of games.

1. If an organization does not reapply for a license, it shall return its unplayed games to the attorney general or distributor within fourteen days. An organization may not destroy an unplayed or unreported game without permission of the attorney general.
2. When an organization disposes of played deals of pull tabs and bingo cards, club specials, coin boards, tip boards, seal boards, and punchboards, the disposal method must assure complete destruction.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-02-22. Independent contractor and interorganization functions restricted.

1. Except for a twenty-one or paddlewheel drop box cash count by a security agency, person providing bookkeeping services, or as provided by subsection 3, an organization may not employ an independent contractor to conduct games. Only an organization member, employee, or member of an auxiliary to an organization may manage, control, or conduct games. An organization may employ, on a temporary basis up to three months, a person to serve in an advisory capacity.
2. Except between organizations that are closely connected, an organization may not perform these gaming functions for another organization:
 - a. Withdraw currency from a dispensing device, add pull tabs or bingo cards to a device, record accounting meters of a device, or take a deposit amount to a financial institution;
 - b. Manage or control a gaming operation, including personnel recruitment and termination, site procurement, public relations, write correspondence, initiating a criminal history record check, and ensuring compliance with the gaming law and rules;

- c. Procure gaming equipment, store played or unplayed games, or maintain inventory control and reconcile inventory;
 - d. Maintain custody of a bank account, transfer funds, or write checks; or
 - e. Select an eligible use recipient and determine the amount of contribution.
3. An organization may perform these gaming functions for another organization:
- a. Summarize or audit a closed game;
 - b. Prepare budgets, financial statements, tax returns, government payroll reports, payroll checks;
 - c. Perform bookkeeping services and reconcile inventory;
 - d. Repair and store a dispensing device;
 - e. Train personnel how to conduct games and operate a dispensing device; and
 - f. Take a locked bank bag or locked drop box to a financial institution provided the service organization has no access key.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-23. Audit and inspection of facilities and records.

1. All records of an organization, distributor, and manufacturer are subject to audit by the attorney general, without notice. The audit may be performed at a site, office, or location chosen by the attorney general. Upon an audit, an organization, distributor, or manufacturer shall provide records and assistance to the attorney general as requested. A person may not prohibit or impede an audit.
2. A site and an organization's, distributor's, and manufacturer's facility must at all times be open to inspection, without notice, by the attorney general or a local law enforcement official.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-02-24. Denial, suspension, or revocation of a license.

1. The attorney general may deny, suspend, or revoke a license of an organization, distributor, or manufacturer when the applicant or licensee has:
 - a. Violated, failed, or refused to comply with any provision of the gaming law or rules or any other law of North Dakota or has knowingly allowed, caused, aided, abetted, or conspired with another person to cause the person to violate any provision of the gaming law or rules or any other law of North Dakota;
 - b. Falsified information on a license application or obtained a license by fraud, misrepresentation, concealment, or mistake;
 - c. Denied the attorney general access to a site or manufacturing facility, or failed to timely provide information requested or required by the gaming law or rules;
 - d. Misrepresented, or failed to disclose, a material fact to the attorney general; or
 - e. Engaged in any act or practice to defraud or cheat a person, or has used a device or scheme to defraud a person.
2. Upon revocation of a license, an organization, distributor, or manufacturer shall return the license and, if applicable, site authorization to the attorney general.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-14, 53-06.1-16, 53-06.1-17

**CHAPTER 99-01.2-03
ACCOUNTING RULES**

Section	
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99-01.2-03-01. Accounting records and system of internal control.

1. An organization shall maintain complete, accurate, and legible accounting records in North Dakota. Except as otherwise provided by rule, an organization shall retain records for three years from the end of the quarter in which the activity was reported.
2. Except for an organization that has gross proceeds of twenty-five thousand dollars or less or is involved only in conducting no more than two events during a fiscal year of July first through June thirtieth, a governing board of the organization shall establish a written system of internal control, comprised of accounting and administrative controls. An organization may not permit any person to review this system, except the attorney general, law enforcement officials, authorized employees, and an adviser. If the attorney general determines that a system of internal control is inadequate, an organization shall remedy the inadequacy.
3. Accounting controls must include procedures and records that achieve these objectives:
 - a. Transactions are executed as authorized by management;
 - b. Gaming activity is properly recorded;
 - c. Access to cash, games, and other assets is permitted as authorized by management; and

- d. Assets recorded on records are periodically compared to actual assets and any differences are resolved.
4. Administrative controls must describe the interrelationship of employee functions and their division of responsibilities.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-02. Gaming account.

1. An organization shall maintain at least one gaming account at a financial institution located in North Dakota. This account must be used for depositing gaming funds and transferring net proceeds to a trust fund account. For purposes of this rule, net proceeds is calculated as adjusted gross proceeds, less gaming and excise taxes, and less the greater of the actual gaming or allowable expenses. This transfer must be made by the last day of the quarter following the quarter in which the net proceeds were earned. The gaming account may be used for payment of expenses. An organization may transfer funds to its general account for payment of expenses. This account must be at a financial institution located in North Dakota.
2. Interest earned is other income. A service fee is an expense.
3. Except to reimburse the account for a negative imbalance, and to deposit raffle nongaming funds, bingo dauber receipts and sales tax, an organization may not deposit nongaming funds into a gaming account.
4. If an organization buys a qualifying item of video surveillance equipment according to subsection 2 of section 99-01.2-08-04 and later sells or rents the item, it shall make a record of the transaction, deposit the gross receipts or rental income directly into its gaming account, and make a proper adjustment on the tax return.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-03-03. Trust account.

1. Unless an organization only conducts games for not more than two events per year and each event lasts no more than fourteen calendar days, an organization shall maintain at least one trust account at a financial institution located in North Dakota. Except to reimburse the account for a negative imbalance and as provided by subsection 5, this account must

receive only funds from a gaming account. This account is used only to disburse net proceeds to eligible uses. A transfer of net proceeds to another trust account or to a closely connected organization is not a disbursement of net proceeds.

2. An organization shall disburse net proceeds within a reasonable period. However, if an organization does not reapply for a license before July first, relinquishes its license, or its license is revoked, all net proceeds must be disbursed within ninety days of this action unless an extension is approved in writing by the attorney general. The disbursement must be reported to the attorney general.
3. Except for transferring funds to another trust account, an organization may not transfer funds from a trust account to any other bank account. A disbursement must be payable to the ultimate use - an organization, person, or vendor. However, an organization may make a payment directly to a credit card company for charges on a credit card if the credit card use is restricted to eligible uses and may reimburse its general account for compensation that qualifies as an eligible use and which is paid from the general account. This transfer must be documented by a supporting schedule. No other reimbursement to a general account is allowed.
4. An organization may not deduct an actual loss on an investment of net proceeds in a marketable security on the tax return. Interest earned and actual gains on an investment of net proceeds in a marketable security must be disbursed to an eligible use. A service fee is an adjustment to the account's balance.
5. If a licensed organization receives net proceeds from another licensed organization, the recipient organization shall deposit the net proceeds directly into its trust account and make a proper adjustment on the tax return. If an economic development or tourism organization loans out net proceeds, a repayment of principal must be deposited directly into its trust account and a proper adjustment made on a tax return.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-03-04. Restrictions and requirements.

1. An organization is allowed an expense according to subsections 3 and 4 of North Dakota Century Code section 53-06.1-11 and an additional expense for qualifying items of security and video surveillance equipment (see subsection 2 of section 99-01.2-08-04). The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.
2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.
3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is reasonably prorated to the benefit the organization receives and the media advertising is voluntary by the organization.
4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.
5. A player check returned by a bank as unpaid for any reason and which is uncollectible after a good faith effort of collection by an organization is a deduction toward adjusted gross proceeds.
6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.
7. A net cash short is an expense and a net cash long is other income for a quarter.
8. Only an unopened pull tab or set of jar tickets may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.
9. If foreign currency is exchanged into United States currency, any loss is an expense.

10. No theft of gaming funds can be deducted toward adjusted gross proceeds on the tax return unless an organization:
 - a. Immediately reported the theft to the local law enforcement agency;
 - b. Has documentation that substantiates the theft amount;
 - c. Had physical security of the funds;
 - d. Has an adequate system of internal control as required by subsection 2 of section 99-01.2-03-01; and
 - e. Incurred an identifiable theft.
11. If an organization rents out gaming equipment, the income is nongaming income.
12. If an employee needs to replenish or increase cash on hand, the employee shall:
 - a. Execute a cash withdrawal from the gaming account; or
 - b. Record a check amount, and the amount of cash which is to be withdrawn, on a deposit slip of the gaming account. An employee shall initial and date the deposit slip which must be validated.
13. All accounting records must be completed and initialed or signed with a nonerasable ink pen. An organization shall maintain a register of each employee's name and the employee's initials or signature as the employee normally writes them on a record or report. The initials or signature of a person on a record or report attests that to the person's best knowledge the information is true and correct.
14. A fee charged a player for entry into a twenty-one or poker tournament, less the cost of a prize awarded, must be reported on a tax return. The amount reported for twenty-one is other income. The amount reported for poker is gross proceeds.
15. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost and a donated prize is valued at zero. An organization shall document the cost of a merchandise prize.
16. If a raffle, sports pool, or calcutta prize is forfeited and has previously been reported on a tax return, an organization shall report the prize as other income.
17. When a deal of pull tabs, club special, tip board, seal board, coin board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed in play, an employee shall

compare the game serial number on the pull tab, board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor and complete a prescribed form and attach it to the deal's flare.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-03-05. Reconciliation of net proceeds and trust account carryovers. If an organization's gaming account check register balance is less than its net proceeds carryover balance and or its trust account check register balance is less than its trust account carryover balance, as reported on the tax return for the quarter ended June thirtieth, the organization shall deposit the amount of the difference in the respective account by July thirty-first or an extended date approved by the attorney general. The source of the deposit must be nongaming funds. An organization shall provide the attorney general with evidence of the deposit.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-06. Documenting cash and chips.

1. An organization shall document each game's daily starting and ending cash on hand. Unless there is only one employee on duty when a site opens or closes, the count of the cash must be done by two persons. Both persons shall independently count the cash in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record. The twenty-one and paddlewheel cash on hand may be combined.
2. An organization shall document each game's daily starting and ending twenty-one and paddlewheel chip bank. Unless there is only one employee on duty when a site opens or closes, the count of the chips must be done by two persons and be recorded by each denomination of chip. Both persons shall independently count the chips in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record. A twenty-one and paddlewheel chip bank may be combined.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-07. Prize register. For a bingo session, raffle drawing, and sports-pool board, an employee shall legibly print this information on a prize register when a prize is issued to a player:

1. Name of the site;
2. Game type:
 - a. Bingo - Date of the session and game number.
 - b. Raffles - Date of the drawing, winning ticket number, and initials of two employees who conducted the drawing unless the initials are on another document.
 - c. Sports pools - Date of the sports event, winning score, and gaming stamp number;
3. Amount of a cash prize or a description and cost of a merchandise prize;
4. Name and address of the player. If a record of win is made or a cash prize is twenty dollars or less, a player's address is not necessary;
5. Total amount of cash and cost of merchandise prizes awarded; and
6. Initials of preparer.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-08. Record of win.

1. If a player wins a cash prize greater than two hundred dollars, an employee shall record the win. A record of win must be completed for the total cash prize even if a player splits the prize with another person. The record must be a check drawn from the gaming account, numbered receipt, or flare of a sports-pool board, calcutta board, club special, tip board, or seal board. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, or flare, unless it is already provided:
 - a. Name of the site;
 - b. Game type and, by game type:
 - (1) Bingo, excluding a dispensing device - Date of the session, game number, cash prize amount, and date of

prize payout if different from the date of the session.

- (2) Bingo, involving a dispensing device - Name of the game, cash prize amount, date of activity, and game serial number.
 - (3) Raffles - Date of the drawing, winning ticket number, cash prize amount, and date of prize payout if different from the date of the drawing.
 - (4) Pull tabs, including a dispensing device, punchboards, club special, tip board, seal board, and coin board - Name of the game, cash prize amount, date of activity, and game serial number.
 - (5) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.
 - (6) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.
- c. If a player is personally known by a bar employee or an employee, the player's full name and driver's license number, including state of license registration. Otherwise, the player's full name, address, and driver's license number, including state of license registration. This information must be recorded from a pictured driver's license or tribal, government, or military identification. If a player does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from two other forms of identification or mail the prize to the player; and
- d. Initial of a bar employee or an employee.
2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.
 3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab, punchboard punch, or a bingo card involving a dispensing device.
 4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general or local law

enforcement agency. An organization shall post a notice at a site to warn players of this consequence.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-03-09. Inventory records of games, paper bingo cards, and chips and reconciliation.

1. An organization shall maintain inventory records of all deals and games that have a state gaming stamp affixed to their flares. The records must include the sales invoice number and date, name of game, dates of issuance to and received from a site, site name, period played, and quarter tax return on which reported, by gaming stamp number. Unless an organization has only one site that is the location of its home office, it shall also maintain inventory records at each site.
2. An organization shall maintain inventory records of paper bingo cards. The records must include the sales invoice number and date, primary color or serial number of each type of card and collated booklet, number of faces per card, number of cards per collated booklet, number of cards bought, dates of issuance to a site, and site name. An organization shall also maintain inventory records at each site including primary color or serial number of each type of card and collated booklet, quantity received, date received, and quantity issued and returned for each session.
3. An organization shall maintain a twenty-one and paddlewheel chip master and site inventory logs to record additions and reductions of chip inventories, by value of chip.
4. Each quarter an organization shall reconcile its inventory records of paper bingo cards, and all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed, to the items that are actually in play and in inventory as unplayed. A person shall inspect and count these items that are actually in play and in inventory as unplayed, compare this count to the inventory records, and resolve any difference. The inspection and count must be done by a person who is not primarily responsible for safeguarding the physical inventory of items.
5. Each quarter an organization shall reconcile its inventory of twenty-one and paddlewheel chips that are recorded as being at the home office and site to the chips that are actually in inventory at the home office and site. A person shall count the chips in inventory at the home office and site, compare

this count to the inventory records, and resolve any difference. The count must be done by a person who is not primarily responsible for safeguarding the physical inventory of chips.

6. A reconciliation must be documented, including the result, corrective action taken, name, title, initials, and date of the person who did it.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-10. Bank deposit and verification.

1. The cash profit or other amount referenced by the rules, less the increase or plus the decrease in the starting cash on hand for the next gaming activity, must be deposited in the gaming account by the third banking day following the day of a bingo session; club special, coin board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; poker occasion; day's or interim period's pull tab, twenty-one or paddlewheel activity; or closed bingo prize flare involving a dispensing device. However, the total receipts for a raffle, calendar, and master sports-pool board must be deposited in the gaming account by the third banking day following receipt of the cash.
2. For a day's pull tab activity, bingo session, raffle drawing, poker occasion, twenty-one and paddlewheel activity, and interim period's pull tab or bingo activity involving a dispensing device, a deposit slip or receipt must reference a site, name of the game, date of activity, and deposit amount. For a club special, coin board, tip board, seal board, punchboard, sports-pool board, and calcutta board, a deposit slip or receipt must reference a site, name of the game, date removed from play, deposit amount, and gaming stamp number. For all game types, an employee who is making a deposit shall initial the bank deposit slip.
3. If an organization prepares a deposit slip for more than one type of game, it shall record on the deposit slip or a supporting schedule by each game type, the information required by subsection 2. A supporting schedule must reconcile to a validated bank deposit slip or receipt. A validated bank deposit slip or receipt and any supporting schedule must be included with the accounting records of each game type.
4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain the copy of a two-part bank deposit slip and any supporting schedule

with the accounting record. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule directly to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred directly from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall independently count the cash in the presence of each other and resolve any difference. Then, one person shall record the amount on the accounting record, and both persons shall initial and date the record. The person who makes the bank deposit shall forward a validated bank deposit slip or receipt directly to a bookkeeper. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.

5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.
6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited. The employee shall document the verification by initialing the accounting record and dating it.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-03-11. Summarization and audit. Unless a closed club special, coin board, tip board, seal board, punchboard, sports-pool board, calcutta board, game of pull tabs, game of bingo involving a dispensing device, bingo session, raffle, and twenty-one, paddlewheel or poker daily activity is summarized by a person who did not directly conduct the game, the summarization must be audited by a person who is independent of the person who summarized the activity. A shift manager and gaming manager are not independent. A person who regularly accesses a dispensing device to add pull tabs or bingo cards or withdraw currency is not independent for games of pull tabs or bingo cards involving a device. A person who summarizes or audits a closed game shall verify the number and value of unsold chances, number and value of redeemed prizes, amount on a credit register involving a dispensing device, and

cash profit. If a summarization and audit differ, the person who audited the activity shall notify the appropriate organization representative.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-12. Gross proceeds and cash banks. Gross proceeds for a game must be separately maintained while the game is conducted. Except for twenty-one and paddlewheel cash banks which may be combined, an organization shall use a separate cash bank for each game. If a game's separate cash bank needs replenishment and another game's cash bank, cash reserve bank, or nongaming funds are used as a source of cash, an IOU form must be used to record the loan and payback. An IOU form must include:

1. The game to which funds were loaned and the source;
2. For a club special, coin board, tip board, seal board, series of paddlewheel ticket cards, and punchboard, the game's gaming stamp number;
3. Amount and date of loan and repayment; and
4. Initials of a cash bank cashier or an employee for each transaction.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-03-13. Tax return.

1. An organization that has an active license shall file a tax return each quarter. Closely connected organizations shall file a consolidated tax return. A tax return and payment of tax for a quarter must be postmarked or hand delivered by the last day of the month following the end of the quarter. However, if the last day of the month is a Saturday, Sunday, or holiday, the due date is the first following business day. An extension for filing a tax return may be granted for good cause, with approval of the attorney general, by filing a written request explaining the reason. A request must be postmarked or hand delivered by the due date of a tax return.
2. An incomplete tax return will not be considered timely filed unless it is correctly completed and returned by the due date or an approved extended date. A tax return is incomplete if information is missing, it is not properly signed,

instructions are not followed, or required documentation is not provided.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

CHAPTER 99-01.2-04
BINGO

Section	
99-01.2-04-01	Bingo
99-01.2-04-02	Equipment
99-01.2-04-03	Conduct and Play
99-01.2-04-04	Cash Register
99-01.2-04-05	Tickets
99-01.2-04-06	Paper Card Count
99-01.2-04-07	Floorworker Sales Report
99-01.2-04-08	Recordkeeping

99-01.2-04-01. Bingo.

1. This chapter applies to bingo not involving a bingo card dispensing device.
2. Bingo is when a player buys a card and covers squares as a caller announces a letter and number or only a number for speedball bingo. Speedball bingo is a game in which a bingo caller announces the drawn numbers in a fast manner. Except for a bonanza bingo or quickshot game, a winning player of a game is the player who first covers a predetermined pattern of squares by matching letters and numbers on a bingo card with balls drawn and called and the player has timely called bingo. Bonanza bingo is a game in which a bingo caller predraws a certain quantity of balls before a session begins for a predetermined pattern and players buy and play cards throughout the session. During the session when the bonanza bingo game is conducted, unless a player has already won, the caller will draw additional balls until a player wins the game. Quickshot bingo is a game in which a bingo caller draws a certain quantity of balls for the game before a session begins for a predetermined pattern and players may buy and play the cards throughout the session.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-04-02. Equipment. An organization shall use this equipment:

1. A device from which balls are withdrawn or a random number generator. If a random number generator is not used, a set of either seventy-five or ninety balls bearing the letters and numbers corresponding to the bingo cards in play. The balls must be available for inspection by a player before a session begins. The balls must be equal size, weight, shape, and

balance, not be defective, and must be in a receptacle before each game begins. A flashboard is optional.

2. Hard cards and paper cards, including paper cards that enable a player to select and print numbers on a blank card, may be used. A blank card may be used if:
 - a. A card is a two-part carbonless card with a control number, has twenty-five squares arranged in five vertical and five horizontal rows, and the letters B, I, N, G, and O are preprinted above the vertical columns;
 - b. A player shall legibly print in ink one number in each blank square. The middle square may be a free space. The numbers cannot be repeated on a card and they must correspond with the letters and numbers of the bingo balls;
 - c. After a card is completed, a player shall provide an employee with the card before the start of the game. An employee shall ensure that the numbers are legible, validate the original and duplicate parts of a card, retain the original part, and return the duplicate part to the player; and
 - d. An employee shall verify a winning player's card and match the card's original part to the duplicate part. A card must be voided if it is illegible or altered.
3. Before conducting a bingo session, an employee shall test the equipment and ensure it is working properly.
4. At an organization's option, a player may use an electronic bingo card marking device that electronically marks facsimiles of purchased cards. An organization may restrict the number of cards per player.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-04-03. Conduct and play.

1. These rules must be posted:
 - a. A person may not separate a paper card when there are two or more faces on a sheet;
 - b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an

employee on duty. This rule is not required to be posted if a person under twenty-one years of age is not allowed on the site;

- c. If an organization does not restrict duplicate cards from being in play for a game, it shall post or convey that information to all players before their purchase of cards or packages;
 - d. The actual letter and number on a ball drawn or freely awarded is official; and
 - e. If a person uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.
2. An organization shall comply with and post these policies:
- a. A policy of when an organization may cancel a bingo session.
 - b. A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;
 - c. A policy that a bingo is timely called by a player when the player calls the word "bingo" or other required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy; and
 - d. A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:
 - (1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.
 - (2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:
 - (a) The designated prize;
 - (b) An equal share of the designated prize; or
 - (c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning

player is in relation to the total number of winning players. To illustrate, if three players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.

- (3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:
 - (a) Award each winning player a substitute merchandise prize which must be of at least equal value and total the retail price of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;
 - (b) Award a certain cash split amount; or
 - (c) Conduct a playoff game between the winning players.
3. An employee may only assist a disabled player in playing a bingo card. A legally blind or disabled player may use the player's personal braille or special card when an organization does not provide such a card. An organization may inspect and reject the card.
4. An employee may not sell a gift certificate for the purchase of a bingo card or package unless:
 - a. A gift certificate is accounted for when it is sold. An employee shall issue a gift certificate to the purchaser to document the sale. An organization shall recognize a sale of a gift certificate as gross proceeds on the tax return for the quarter in which it was sold; and
 - b. A redeemed gift certificate is signed by a player and retained by an organization. A player is issued a bingo card or package at the site when the gift certificate is redeemed.
5. If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.
6. If an organization sells two or more differently priced cards or packages for a game that provides for different prizes, an employee shall use a distinct type or color of cards or mark each card by a method that enables the employee to distinguish each differently priced card.

7. If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.
8. If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the daily records. A discount must be less than the value of the card or package bought. A register must contain:
 - a. Bingo session and date of the session;
 - b. Amount of the discount;
 - c. Value of the bingo card or package bought;
 - d. Signature of the player;
 - e. Total amount of bingo card or package discounts for the session; and
 - f. Initials and date of the cashier.
9. A card or package must be bought on a site immediately before the start of a game or during a session. Except for a bonanza bingo or quickshot game, no card may be sold for a game which is in progress or concluded. If a paper bingo card is included in a package for a game in progress or concluded, the card must be withdrawn and voided or destroyed.
10. An organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an organization experiences an extraordinary incident, a session is canceled, or a player has an emergency. An employee may exchange a purchased package for another package if the employee accounts for all the components of the first package and a session has not started.
11. If an organization sells hard cards before each game, an employee shall collect all the cards not paid for. A person may not play a card not bought from an organization. An organization may allow a player to share the player's cards with another person.
12. Unless the pattern of a game is the same as the preceding game, an employee shall announce the winning pattern before each game is begun.

13. If a game has an actual or potential prize valued at five hundred dollars or greater or involves differently priced cards for different prizes, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn and retain the record for three months; or audio tape the bingo caller calling the balls and retain the tape for three months. Also, when a player bingos, an employee shall record in writing or audio tape the following and retain the record for three months;
 - a. Game number, winning pattern, type of card (regular, premium, super), series (card) number, and last number called; and
 - b. Cash register receipt number, if applicable.
14. Except for speedball bingo or when a monitor or random number generator is used, a caller shall manually display the letter and number on the ball to players. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.
15. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used. A floorworker may not access a verifier.
16. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection. A player may win an additional prize by choosing the prize by random selection or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize or plays a game of skill.
17. No bingo card or package may be a prize. An organization may not award, as a prize, a gift certificate that can be redeemed for a bingo card, package, or any other game piece.
18. An organization may conduct a qualifying game whereby a player wins the game's prize and an opportunity to play in a special game, but not for free.
19. An organization may award a bonus that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, flyer, or is announced before a session, and is recorded on a prize register. Factors include a player

bingoing on a certain last number called or winning a game on the player's birthday.

20. Immediately before a session, an employee shall announce an organization's policy on when a bingo is timely called by a player.
21. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.
22. Bonanza bingo and quickshot games must be conducted as follows:
 - a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for bonanza bingo and quickshot games, have restricted access, and reference that game;
 - b. A card must be sealed and unpeekable when it is sold;
 - c. An organization may sell or exchange cards throughout a session until sales are closed. Except for a quickshot game and an organization that does not permit exchanged cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.2-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;
 - d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a quickshot game;
 - e. A game may not extend beyond a session;
 - f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:
 - (1) Uniquely mark (validate) each card to be used during the session by:
 - (a) Validating a card with a mechanical device or rubber stamp with a unique symbol. The validation must identify the card with a particular session for that date. A card validated for a session, but not sold, must be voided; and

- (b) Requiring a player to write the player's name on the face of the exchanged card.
- (2) Retain the exchanged cards as part of the daily records for six months.
- (3) Record the validation designations and card color combinations by session.
- (4) Reconcile the cards, accounting for:
 - (a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification.
 - (b) Number of cards sold.
 - (c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be recounted by an employee who is not a floorworker and who did not complete the floorworker sales report. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and date and initial. A floorworker shall also initial the floorworker's banded group.
 - (d) Number of cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification.
 - (e) Document any discrepancy and corrective action taken; and
- g. All voided cards must be retained for six months.
- 23. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.
- 24. Except for a quickshot bingo game in which a winning card contains information required by section 99-01.2-03-07 and is retained, an employee shall record a prize and bonus prize on a register according to section 99-01.2-03-07. If a player wins a cash prize greater than two hundred dollars, an employee shall also record the win according to section 99-01.2-03-08.

25. Unless written approval is obtained from the attorney general for use of another receipting method, an organization shall receipt gross proceeds by a cash register, tickets, paper card count, or floorworker sales report.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-04-04. Cash register. This receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, excluding floorworker sales, by issuing consecutively numbered receipts.

1. A receipt must contain:
 - a. Name of a site or organization;
 - b. Date of the session; and
 - c. Selling price of a card or package, and receipt number.
2. A cash register must:
 - a. Have a consecutive four-digit receipt number which does not return to zero at the end of any use and retain its transaction count between uses if it is off or without electricity; and
 - b. Separately record, by a key or a method, each type of regular priced or discounted card or package sold and a gift certificate, and provide a total for each of these sales.
3. A cash register receipt for a void, mistake, or similar item must be retained with the daily records.
4. All transactions and control totals must be recorded on an internal tape that must be retained with the daily records. If a cash register is also used for a purpose other than bingo, the internal tape from the other use must also be retained.
5. A cash register cashier may not issue a refund or void a sale that has been recorded as a transaction, but may do a no sale transaction to access a cash drawer. For a refund, a cashier's supervisor shall execute a refund, and initial the refund transaction on the internal tape. For a voided sale, a cashier's supervisor shall initial the void transaction on the internal tape. If a supervisor is not available or if the

cashier is the supervisor, another employee shall comply with this rule.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-04-05. Tickets. The ticket receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, including floorworker sales, by issuing consecutively numbered tickets. These rules apply:

1. All tickets on a roll must have a preprinted consecutive number. Each roll of tickets must be recorded on a log when received. A log must include the date each roll is acquired, ticket color, beginning and ending ticket numbers, and number of tickets on the roll; and
2. Tickets must be issued consecutively from a roll. The daily records must contain the ticket color, ticket selling price, and lowest and highest numbered tickets issued from each roll for a session. Every ticket on a particular roll must be issued for the same price. Tickets issued for each type of sale must be recorded separately. A ticket not issued during a session that bears a number below the highest numbered ticket issued, along with any tickets from the end of the roll which will not be issued in a future session, must be retained as part of the daily records as unsold.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-04-06. Paper card count. The paper card count receipting method may be used to record gross proceeds of paper bingo cards. The daily records must include the total number of cards or collated sets taken from inventory and returned to inventory. Unless there is only one employee on duty when the cards or sets are taken from or returned to inventory, the count of the cards or sets must be done by two persons. Both persons shall independently count the cards or sets in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record. The record must include the serial number or color, selling price of the card or set, and number of cards or sets issued for each type of sale.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-04-07. Floorworker sales report. The floorworker sales report receipting method may be used to record gross proceeds of paper bingo cards by floorworkers. A report must be completed, for each floorworker, by an employee who is not a floorworker. For a bonanza bingo game in which an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, a report must contain all the information required by subsections 1 through 9. For all other games, each floorworker's report must contain all the information required by subsections 1 through 6. Also, for all other games, subsections 7, 8, and 9 must be completed by session.

1. Game number.
2. Floorworkers' names or assigned numbers.
3. Selling price of each single (one card) and packet.
4. Number of singles and packets issued to each floorworker, by game. The employee issuing the cards and the floorworker shall initial the report. If an organization sells singles at a discount, the number of discounted sets must be predetermined and separately accounted for when issued to a floorworker.
5. Number of singles and packets returned by floorworker, by game, as unsold, including the number of exchanged bonanza bingo cards. The floorworker and an employee who is not a floorworker shall count the cards and initial the report in the presence of each other.
6. Number and value of singles and packets sold by each floorworker, by game.
7. Amount of cash turned in to a cashier by floorworker. The floorworker and the cashier shall count the cash and initial the report in the presence of each other.
8. Amount of cash long or short by floorworker.
9. Total value of singles and packets sold, total cash turned in, and total cash long or short.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-04-08. Recordkeeping.

1. For each session, records must include:
 - a. The gross proceeds for each type of sale or game;

- b. The starting and ending cash on hand according to section 99-01.2-03-06;
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
 - d. Prize register according to section 99-01.2-03-07 and record of win according to section 99-01.2-03-08;
 - e. Inventory records according to section 99-01.2-03-09.
 - f. If bingo is the primary game at a site, the number of players and time of the count;
 - g. A copy of the bingo program. However, if the program does not change each day, an organization may retain one program and record the dates on which it applied; and
 - h. Redeemed gift certificates and discount coupons.
2. The cash profit (see subdivision a of subsection 6 of section 99-01.2-02-01) must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-05
RAFFLES**

Section

99-01.2-05-01	Raffle
99-01.2-05-02	Tickets - Limitations and Requirements
99-01.2-05-03	Prize Restrictions
99-01.2-05-04	Information on a Ticket
99-01.2-05-05	Double Admission Tickets
99-01.2-05-06	Prize Must be Awarded
99-01.2-05-07	Reporting Gross Proceeds and Prizes
99-01.2-05-08	Recordkeeping

99-01.2-05-01. Raffle. A raffle is a game in which a prize is won by a player who bought a raffle ticket. A winning player is determined by drawing a ticket stub from a receptacle or by an alternate fair method. A calendar raffle is a type of raffle in which a player's ticket stub is entered in two or more drawings held on predetermined days over an extended period of time for predetermined prizes. The conduct of a raffle is the raffle drawing. An organization may not sell a ticket unless it is licensed or has a local permit.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-05-02. Tickets - Limitations and requirements.

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.
2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the value of a ticket as compensation, and may not compensate the seller a certain amount for selling a winning ticket. No raffle ticket can be resold.
3. A raffle ticket must have a stub or other detachable section which is consecutively numbered. Except for the use of double admission tickets, a stub must have a duplicate number corresponding to the number on the ticket and contain the purchaser's name, address, and telephone number. A ticket must be issued, as a receipt, to a player. For a raffle

conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a local permit, the ticket numbers may be manually imprinted.

4. An employee may not sell a ticket on a site where another organization is licensed or has a local permit unless the employee is granted permission by the lessor and other organization.
5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.
6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.
7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted from when the ticket was sold through the end of the calendar raffle. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.
8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.
9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. However, this rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize.
10. For a cash prize greater than two hundred dollars, an employee shall record the win according to section 99-01.2-03-08.
11. An organization may not print any word or phrase on a ticket which implies or expresses that a purchase of the ticket is a charitable donation.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-05-03. Prize restrictions.

1. No prize may be real estate, ticket for entry into another raffle, live animal, or be based on the number of tickets sold. A prize may be any property that may be legally owned and possessed. Cash or merchandise prizes may be awarded. A single cash prize cannot exceed one thousand dollars and, during one day, the total cash prizes cannot exceed three thousand dollars.
2. An organization may convert a merchandise prize to a cash prize; provided, that the retail price of a single merchandise prize does not exceed one thousand dollars and, during one day, the retail price of the converted merchandise prize and cash prizes do not exceed three thousand dollars.
3. An organization shall own or have a contract to acquire a merchandise prize before a drawing. However, an organization does not need to register or title an automobile or similar item.
4. Besides a prize that is stated on a ticket to be awarded, an organization may offer an additional merchandise prize provided:
 - a. A ticket must describe the prize and state that it is not guaranteed to be won;
 - b. The prize is predetermined and limited to a winning player of one of the other prizes;
 - c. A player is not required to pay an additional amount or forfeit a prize to participate;
 - d. Unless an organization owns a prize, an award of the prize must be insured; and
 - e. A drawing is conducted from all tickets sold.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-05-04. Information on a ticket. Except for double admission tickets, each ticket must contain this preprinted information:

1. Name of organization;
2. Ticket number;
3. Price of the ticket, including any discounted price;
4. Prize or description of an optional prize selectable by a winning player. However, if there is insufficient space on a

ticket to list each minor prize that has a retail price not exceeding ten dollars, an organization may state the total number of minor prizes and their total retail price;

5. For a licensed organization, print "office of the attorney general" and license number. For an organization that has a local permit, print the city or county and local permit number;
6. A statement that a person is not required to be present at a drawing to win;
7. Date and time of the drawing. For a calendar raffle, if the drawings are on a same day of the week or month, print the day and time of the drawing;
8. Location and address of the drawing; and
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-05-05. Double admission tickets. An organization may use double admission tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;
2. All tickets must be sold consecutively at a site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price. No ticket may be sold at a discount. The organization and player each retains one ticket;
3. A winning player need not be present when a drawing is held but shall claim the prize within one hour of the drawing. Otherwise, an organization shall conduct a second prize drawing, or more, until the prize is claimed. However, for the last hour of an event, an organization may set any redemption period. A statement of the time of the drawing and one-hour redemption requirement must be on all promotional material and be posted at a site; and
4. An organization shall record in its daily records, the color and selling value of each ticket, and the lowest and highest numbered ticket sold from each roll. Any tickets left on a roll which will not be sold in any raffle must be retained as

part of the daily records. This rule does not apply to a local permit.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-05-06. Prize must be awarded.

1. A prize winner must be determined on the date indicated on a ticket unless a different date is requested in writing and approved by the attorney general. If a different drawing date is approved, an organization shall notify the purchasers of the tickets of the change by contacting each purchaser or by making a public announcement. The attorney general may, for good cause, extend the date for a drawing.
2. Within seven days of a raffle, an organization shall notify the winning player, in writing, of the prize and arrange the pickup or delivery of the prize. If a prize remains unclaimed by a winning player for thirty days following the date of the written notification and an organization has made a good faith effort to contact the winner to redeem the prize, the organization may retain the prize, have a second prize drawing, or award it in another raffle.
3. This section does not apply to double admission tickets.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-05-07. Reporting gross proceeds and prizes.

1. When the sales price of a raffle ticket relates partly to admission for a meal or other nongaming activity, an organization shall deposit the gross proceeds into its gaming account and allocate the amount between gaming and nongaming activity in this order:
 - a. An amount is allocated to raffle gross proceeds equal to the cost of the prize.
 - b. An amount is allocated to nongaming activity to recover its cost. This amount is not reported on a tax return.
 - c. The remaining amount is allocated to raffle gross proceeds.
2. If an organization conducts a raffle in which the prize drawing is in one quarter, the gaming activity must be

reported in the quarter in which the prize drawing is held. If an organization conducts a raffle in which prize drawings are in more than one quarter, the gross proceeds and prizes must be reported as:

- a. Report gross proceeds for a quarter based on the percent of prizes awarded in that quarter in relation to the total prizes to be awarded in all the quarters.
- b. Report prizes in the quarters in which the drawings are held.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-05-08. Recordkeeping.

1. For each raffle, records must include:
 - a. Purchase invoice, range of ticket numbers printed, ticket seller's name, quantity issued, range of single and discounted raffle ticket numbers issued to a seller, and quantity sold;
 - b. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;
 - c. A sample of a ticket;
 - d. The stubs of all sold tickets which must be retained for one year from the end of the quarter in which the drawing occurred;
 - e. Price register, according to section 99-01.2-03-07 and record of win according to section 99-01.2-03-08; and
 - f. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return.
2. Inventory records of double admission tickets must list the date each roll of tickets is bought or obtained by an organization, color of ticket, selling value of each ticket, beginning ticket number, ending ticket number, and number of tickets on that roll. All ticket rolls must be entered in the log when received.

3. The total receipts, less the cost of a prize paid by cash, must be deposited according to section 99-01.2-03-10.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01.2-06
PULL TABS, CLUB SPECIAL, TIP BOARD,
SEAL BOARD, COIN BOARD, AND PUNCHBOARD

Section	
99-01.2-06-01	Games - Definitions
99-01.2-06-02	Conduct and Play
99-01.2-06-03	Recordkeeping

99-01.2-06-01. Games - Definitions. This chapter applies to an organization that conducts pull tabs, club specials, tip boards, seal boards, coin boards, and punchboards, but not pull tabs involving a dispensing device. The maximum price per chance is two dollars. A coin board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and may offer a seal prize. For pull tabs described by subsection 3, only a cash prize can be awarded, no merchandise or seal prize. If a merchandise prize is awarded, its retail value must be stated on a flare.

1. "Coin board" means a board used with pull tabs and to which coins of various values are affixed. Under each coin, a cash prize value is preprinted. A board contains numbered lines and may contain a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if the number matches a winning number for a coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When all the numbered lines are signed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, or the board has been conducted for ninety calendar days. A seal prize is not considered a top tier prize. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded coin as a prize in another game, or sell the coin or deposit it in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize and seal prize value is five hundred dollars.
2. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's

full name on the line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. The maximum number of pull tabs in a deal is four hundred. The maximum cash prize and seal prize value, including the retail price of a merchandise prize, is one hundred dollars.

3. "Pull tab" means a folded or banded ticket (jar ticket) or a card with break-open tabs (pull tab) or latex covering. Unless otherwise stated, the terms "pull tab" and "jar ticket" are used interchangeably. A winning pull tab contains certain symbols or numbers. The maximum cash prize is five hundred dollars.
4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize. A player extracts a punch from the punchboard. If the number on the punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. The value of a last sale prize cannot exceed the value of a top tier winning prize. The maximum cash prize and seal cash or merchandise prize value, at retail price, is five hundred dollars.
5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. After all the lines are signed, the seal is removed to reveal the winning line number. An organization shall indicate the prize and cost per play on a seal board. The maximum seal cash prize value is five hundred dollars and the maximum seal merchandise prize value, at retail price, is five hundred dollars.
6. "Tip board" means a placard to which jar tickets are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. After all the lines are signed, the seal is removed to reveal the winning line number. The maximum number of jar tickets in a deal is four hundred. The maximum cash prize and seal prize value, including the retail price of a merchandise prize, is one hundred dollars.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-06-02. Conduct and play.

1. Deals of pull tabs must be commingled for a game as follows:
 - a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An organization may add a deal to a game at any time. An employee shall add a deal to a game if there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold.
 - b. Except for the game serial number, and a minor difference in printing that is approved by the attorney general, the deals must be identical. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, neapolitan colored bands may be used. When a deal is added to a game, an employee shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used.
 - c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature.
 - d. If an indicator for adding a deal to a game has been reached and an organization does not have a proper deal to add, the organization shall temporarily suspend the game until it procures a proper deal. If twenty-five consecutive calendar days elapse since a game was placed in play, a proper deal has not yet been procured, and all top tier winning pull tabs have been redeemed, an organization may close the game. Otherwise, the organization shall reactivate the game until all top tier winning pull tabs are redeemed or it is the end of a quarter, whichever occurs first.
 - e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed.
 - f. If a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site or all the top tier winning pull tabs have been redeemed and:

- (1) Fifty deals have been added to a game;
 - (2) A game's actual gross proceeds is twenty-five thousand dollars; or
 - (3) A game has been in play for twenty-five consecutive calendar days; and
- g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the present quarter within fourteen calendar days before the end of the quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out.
2. An employee may not place a deal of pull tabs, club special, or coin board in play which has a manufacturer's or distributor's seal broken on the games' container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.
 3. A person may not modify a state gaming stamp or a flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.
 4. These rules must be posted:
 - a. Restricting the play of a game to one player or a group of players is prohibited;
 - b. A winning pull tab must be redeemed within a fifteen-minute time limit;
 - c. If a person solicits, provides, or receives any inside information, by any person, by any means, or uses a fraudulent scheme or technique to cheat or skin involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;

- d. A pull tab cannot be redeemed if the pull tab has been taken from the gaming area; and
 - e. To the best of the organization's knowledge, a coin remaining on a board relates to a winning pull tab that has not been bought. This rule is not required to be posted if an organization does not conduct a coin board.
5. An organization shall comply with and post these policies:
- a. Method of paying the last sale prize when two or more players desire to buy the last pull tab. This policy is not required to be posted if an organization does not pay a last sale prize;
 - b. The information, if any, authorized by subdivision a or b, or both, of subsection 7;
 - c. The limit, if any, of the number of pull tabs that a player may buy; and
 - d. The number of pull tabs that two or more players may buy when a game is being closed.
6. A player may not redeem and an employee may not knowingly pay a prize for a pull tab after fifteen minutes has elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the time limit, an employee shall retain and void the pull tab.
7. A person may post the information referenced by subdivision a or b, or both, for a commingled game provided that the posting contains a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be:
- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values.
 - b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The information must be continually updated.

8. An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.
9. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 3 of North Dakota Century Code section 53-06.1-16.1, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.
10. An employee may only assist a disabled player in opening a pull tab.
11. An employee shall deface a winning number, symbol, or set of symbols of a pull tab and punchboard punch when it is redeemed. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game.
12. If a player buys a set of jar tickets and, before or after opening any jar ticket, determines that the set contains less than the standard number of tickets, an organization may issue the player only the number of tickets actually missing. An organization may staple together the proper number of loose jar tickets of a game to sell. An organization may, at any time, sell a loose jar ticket at a proportional selling price of a set.
13. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place these pull tabs back into play.
14. Unless an organization conducts a game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee, including a shift manager and gaming manager, who did not conduct the game shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, an employee, including a shift manager and gaming manager, who did not conduct the game shall do a weekly interim audit of the games at the site

for twelve continuous weeks. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general.

15. If a commingled game has a last sale prize feature and is sold out, an employee shall award a player who actually buys the last pull tab the last sale cash prize.
16. An organization may transfer a commingled game, club special, tip board, seal board, coin board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.
17. Except for a last sale prize, an employee may not pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab from a game conducted at a site.
18. Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.
19. An organization may not publicly display a redeemed pull tab.
20. If an organization believes a deal is defective, it shall contact the attorney general. An organization or employee may not use or continue to conduct a defective deal after receiving notification from a distributor or the attorney general of a ban or recall of the deal.
21. If a player wins a last sale prize or a seal prize of any cash amount, or a cash prize of more than two hundred dollars, an employee shall record the win according to section 99-01.2-03-08. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-06-03. Recordkeeping. Records must include:

1. A flare with all redeemed and unsold pull tabs or punches for that game. These records must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize

value, total prizes, and the number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done by shift or day, the redeemed pull tabs must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups for that game. There must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit;

3. For a club special, tip board, seal board, coin board, and punchboard, a daily accounting of prizes, by gaming stamp number;
4. A daily accounting of starting and ending cash on hand according to section 99-01.2-03-06;
5. For a deal of pull tabs or coin boards, the deal's game information sheet which must be attached to the deal's flare;
6. A summary of ideal gross proceeds, value of unsold pull tabs, punches, or lines, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return;
7. Record of win according to section 99-01.2-03-08;
8. Inventory records according to section 99-01.2-03-09;
9. For a commingled game, the cash profit (see subdivision c of subsection 6 of section 99-01.2-02-01) must be deposited intact according to section 99-01.2-03-10; and
10. For a club special, tip board, seal board, coin board, and punchboard, the cash profit (see subdivisions e and f of subsection 6 of section 99-01.2-02-01) must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01.2-07
SPORTS POOLS

Section
99-01.2-07-01 Sports Pool
99-01.2-07-02 Recordkeeping

99-01.2-07-01. Sports pool. A "sports pool" is comprised of wagers paid by players for a line or square that will determine which player wins. The maximum cost per line or square is five dollars. The conduct of a sports pool is the game. Only cash prizes can be awarded.

1. A sports-pool board must be a ten or twelve line or twenty-five or one hundred square board, be acquired from a distributor, and contain:
 - a. A North Dakota gaming stamp and a serial number;
 - b. Opaque tape covering the assigned numbers; and
 - c. Preprinted phrases of "cost per play", "ideal prizes", and "method of prize payout".
2. An organization shall complete the cost per play, ideal prizes, and method of prize payout on a board before selling it. The method of prize payout may be at periodic intervals or the end of a game. The total payout cannot exceed ninety percent of the gross proceeds.
3. A sports pool must be conducted for a professional sporting event only. An organization shall designate one opponent along the vertical columns of numbers and the other opponent along the horizontal rows of numbers. However, if the opponents are unknown when the board is being sold, an organization shall designate identifiable conferences, divisions, or games. A purchaser of a square or line shall write the player's full name in that square or on that line. Except for a calendar sports pool, no tapes may be removed until all the squares or lines are sold and the opponents are designated. If all the squares or lines are not sold, an organization may advance the board to another game or refund the players' money. If opponents were designated but the board is advanced to another game, an organization shall keep the same opponents or designate new opponents. An organization shall post a notice on a site disclosing its policy for advancing an unsold board. Gross proceeds must be separately maintained for each board.
4. An organization may conduct a calendar or master sports pool for two or more games of the same sport. An organization shall use one board for each game and buy the necessary number

of boards before selling any square. For example, if a sports pool involves sixteen games, an organization shall buy sixteen boards. A player buys the same square on each board for all the games for a maximum price of five dollars per square per game. If all the books of a calendar sports pool or all the squares of a master sports pool are not sold before the first game, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity". Otherwise, each board is reported separately on a tax return for the quarter in which the game was held.

5. A calendar sports pool must be conducted as follows:
 - a. The tapes covering the numbers assigned the horizontal rows and vertical columns of the boards must be removed to reveal the numbers. One opponent must be designated along the vertical columns of numbers and the other opponent designated along the horizontal rows of numbers. The board must state the game and its date;
 - b. Each square of each board must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right;
 - c. Each board must be printed and may be reduced in size. The quantity printed is based on the type of board. For example, for a one hundred square board, each board must be printed one hundred times. A printed board for each game and a receipt comprise a book;
 - d. A receipt must contain:
 - (1) A consecutive receipt number starting with one. A statement that the receipt number is the player's assigned square for all the boards in the book;
 - (2) Name and address of organization and name of site;
 - (3) For a licensed organization, print "office of the attorney general" and license number. For an organization that has a local permit, print the name of the city or county and local permit number;
 - (4) Price of the book, method of prize payout and prize; and
 - (5) A detachable section containing a player's full name, address, telephone number, and matching receipt number which is retained by an organization;
 - e. A player may not choose a particular book to buy. When a book is sold, a receipt's detachable section is completed.

After a player buys a book, the player may see the numbers assigned that player's square on the boards; and

- f. A board must be posted at the site on the day that the related game is held.
6. A master sports pool must be conducted as follows:
- a. An organization shall post a twenty-five or one hundred square master board at a site. Each square must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right. A master board must include:
 - (1) Name of organization;
 - (2) The games;
 - (3) Price of participating, number of games, method of prize payout and prize; and
 - (4) A statement that the scores assigned to the players' squares for each game will be posted at the site five days before the game.
 - b. A player shall buy a square and write the player's full name and telephone number in it.
 - c. A sports-pool board with the state gaming stamp affixed must be posted at a site before the game related to that board is held.
7. The winner of a board is determined, at the end of each payout period:
- a. For a ten line board, by determining the line that is assigned the last number (one's position) of the combined score of both opponents.
 - b. For a twelve line board, by determining the line that is assigned the number of the round in which the boxing match ended.
 - c. For a twenty-five and one hundred square board, by determining the square at the juncture of the horizontal row and vertical column which relate to the numbers (one's position) of each opponent's score.
8. An employee may not sell a board on a site where another organization is licensed or has a local permit unless the employee is granted permission by the lessor and other organization.

9. An organization shall make a good faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the notification, the prize is forfeited.
10. An employee shall record a prize on a board or a register according to section 99-01.2-03-07. If a prize is recorded on a board, the board must contain the information required by section 99-01.2-03-07. If a player wins a cash prize greater than two hundred dollars, an employee shall also record the win according to section 99-01.2-03-08.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-07-02. Recordkeeping.

1. For each sports-pool board, records must include:
 - a. The sold board indicating the winning square or line. A board must be retained for one year from the end of the quarter in which the activity occurred. However, if an organization uses a board as a prize register, the board must be retained for three years from the end of the quarter in which the game was held;
 - b. The daily starting and ending cash on hand according to section 99-01.2-03-06;
 - c. The type of professional sport and amount of each prize;
 - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return; and
 - e. Record of win according to section 99-01.2-03-08.
2. Inventory records according to section 99-01.2-03-09.
3. The total receipts, less the cost of a prize paid by cash, must be deposited according to section 99-01.2-03-10.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-08
TWENTY-ONE**

Section

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99-01.2-08-01. Twenty-one.

1. "Twenty-one" is a card game in which a player tries to obtain a higher total card count than a dealer without exceeding twenty-one. An ace counts either one or eleven. A king, queen, and jack have a count of ten. Cards two through ten are counted at their face value.
2. A maximum of seven players may play at a table. A player may play up to two betting spaces if an adjacent betting space is available. An outsider may not wager on a player's hand and a player may not wager on another player's hand.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-08-02. Table, drop box, cards, and dealing shoe.

1. If there is more than one table at a site, a table must have a number. A table playing surface must display up to seven separate betting spaces and these statements:

BLACKJACK PAYS 3 TO 2

and

DEALER MUST STAND ON 17 AND MUST DRAW TO 16

2. A table must have a drop box that meets the specification of subsection 5 of section 99-01.2-15-02. If there is more than

one table at a site, a drop box must have a number matching the table number. A drop box must have a money plunger which must remain in the slot unless the plunger is used to insert currency or forms.

3. The cards must be four, six, or eight complete decks and be dealt from a dealing shoe located at a dealer's left. The cards must be the same size, shape, design, and be jumbo-faced. The color of the backs of all decks must be one predominate color, or one-half of the number of decks must be one predominate color and the other decks a different predominate color. The design on the back of each card must be identical.
4. A dealing shoe must have a face plate, base plate, and sides, and hold four or more complete decks of playing cards.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-03. Chips.

1. A wager and tip must be made with chips. If an organization accepts a five dollar wager, it shall provide five dollar chips to players for their optional use. Chips may be issued in values of fifty cents, one dollar, two dollars, and five dollars. An organization may not use different chips of the same value at a site.
2. Each chip must be round in shape, be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips from all other organizations' chips. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters and this level of activity is expected to continue or an organization installs a video surveillance system at a site, regardless of the value of wagers accepted at the site, the chips must meet the specifications of subsection 3.
3. As required, each value of chip must have the following prescribed primary color when the chip is viewed in daylight and under incandescent light. Along with the primary color, a chip must have one or two contrasting secondary colors as edge spots. Edge spots must be visible on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the

organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:

- a. Fifty cent chip - mustard yellow which is the color classified as 5Y 7/6 on the munsell system of color coding. This chip has no edge spots.
 - b. One dollar chip - white which is the color classified as N 9/ on the munsell system of color coding. A one dollar chip must have four solid edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width.
 - c. Two dollar chip - pink which is the color classified as 2.5R 6/10 on the munsell system of color coding. A two dollar chip must have four split edge spots and each edge spot must be three-eighths of one inch [9.40 millimeters] in width. Each of the two split portions of an edge spot and the space between the two split portions must be one-eighth of one inch [3.05 millimeters] in width. The two split portions of an edge spot must be the secondary color and the middle space may either be the primary color or a third color.
 - d. Five dollar chip - red which is the color classified as 2.5R 4/12 on the munsell system of color coding. A five dollar chip must have six solid edge spots and each edge spot must be one-quarter of one inch [6.35 millimeters] in width.
4. An employee shall safeguard chips by placing them in a safe storage area or, if a table has been opened and no dealer is stationed at it, secure the chip tray with a locking cover.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-08-04. Video surveillance system. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system

for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is continually located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event, but for not more than two events per quarter, does not need a system. An organization shall:

1. Install a system that meets these specifications:
 - a. A super VHS (S-VHS) real time or time-lapse video cassette recorder must be used. It must be secured in a locked area, plugged into an outlet that cannot be switched off, and be programmable with a seven-day memory backup. A recorder must have a built-in or separate time and date generator that displays the time and date on videotape without significantly obstructing a recorded picture. For a time-lapse recorder, the twelve hour recording speed must be used. A recorder used to review a videotape must have forward and reverse frame-by-frame and high speed scanning capability, and may be operable by a wireless remote control;
 - b. A super VHS color camera or a high resolution color camera that has four hundred or more active lines of horizontal resolution must be used. A camera must have a signal to noise ratio, with the automatic gain circuitry off, of forty-five decibels or better. A camera must be positioned above the center of a table or middle of the players' side of the table. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. A camera must be protected by a flush or mounted tinted or clear dome or one-way mirror;
 - c. A camera lens must have an f-stop rating of f-1.2 or better, be color corrected and have a format size equal to or greater than the format size of a camera. A lens may be fixed or variable focus. A lens must have a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;
 - d. A super VHS color video monitor that produces lines of horizontal resolution that equal or exceed the number of active lines of horizontal resolution that a video camera is outputting. A monitor's screen must measure at least thirteen inches [330.2 millimeters] diagonally;
 - e. For a super VHS color camera, super VHS YC or coaxial video cable must be used. For a high resolution color camera, coaxial video cable must meet these specifications:

- (1) If the length of a cable is one hundred linear feet [30.48 linear meters] or less and the cable will not be flexed, exposed outside a building, or constantly moved, the center conductor must be stranded or solid pure copper material. Otherwise, the center conductor must be stranded pure copper material.
 - (2) The shield must be braided pure copper material. The dielectric must be foam material. A cable must be rated for seventy-five ohms of impedance. If a cable is to be placed in a return air system, the jacket must be teflon or other accepted fire-rated material; and
- f. Super VHS (S-VHS) videotapes must be used.
2. Buy only qualifying items. Additional allowable expense funds may only be used to buy or lease and install qualifying items. Replacing or upgrading equipment, expenses related to relocating equipment at a site, playing cards and chips, maintenance agreements, and playing surfaces do not qualify. Qualifying items are:
 - a. Super VHS real time or time-lapse video cassette recorder, time and date generator and locking vented enclosure;
 - b. Super VHS or high resolution color camera with a fixed or zoom lens and camera dome or one-way mirror;
 - c. Super VHS or high resolution color video monitor;
 - d. Super VHS YC or coaxial video cable;
 - e. Super VHS videotapes equal to two tapes per table, per day of activity, for a thirty-day period and a tape storage cabinet;
 - f. Table number and site identification;
 - g. Installation, including lighting fixture;
 - h. Motion detector or trigger device;
 - i. In-line video cable amplifier and surge protector;
 - j. Video printer, tape rewinder, and eraser; and
 - k. Lease payment on initial purchase of qualifying items and interest expense on a financing loan.
 3. If an organization has more than one site, a table must have a site identification. A site identification and any table number must be visible on videotape.

4. Use maroon and black jumbo-faced playing cards, or other colors authorized by the attorney general.
5. For a site with one or more tables, if a recorder or camera for a table is not properly operating and not repaired within seventy-two continuous hours, either close the table or limit wagers to two dollars at all the tables until the equipment is repaired.
6. Maintain a clean dome or mirror.
7. Authorize only a gaming or shift manager or an independent person to:
 - a. Access a recorder, camera, and stored videotapes;
 - b. Start and stop a recorder to record a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day. However, an organization may discontinue recording a table while it is temporarily closed during a day if the table is recorded for ten minutes after it is temporarily closed and when chips are again made available for use on the table; and
 - c. Change a videotape in a recorder for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer at the site. While a tape for a table is changed during a day's activity, gaming on the table must be temporarily suspended. An organization may use a time-lapse or two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one table, their separate recordings for a day's activity must overlap by ten minutes.
8. Retain a videotape in a safe storage place for thirty days.
9. On a weekly basis, an authorized gaming or shift manager or qualified independent person shall review one hour of activity of each table of a site and document the review. A gaming or shift manager may not review a videotape of a table on which the gaming or shift manager dealt. An organization shall discontinue using a videotape that does not produce a clear picture.
10. Use the attorney general's current recordkeeping system unless approval is obtained from the attorney general for use of another system. An organization shall track a dealer's percent-of-hold performance.

11. Limit its purchase or lease of a camera, lens, cable, camera dome, time and date generator, and installation to a vendor approved by the attorney general. However, an organization may buy or lease a qualifying item from another organization provided the equipment meets the specification of subsection 1. An organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to a vendor until the attorney general approves the clarity of the videotape for a table. A vendor shall provide the attorney general with a sample tape to evaluate. If an organization moves a table to a different location at a site, the organization or vendor shall, within fourteen days, provide the attorney general with a sample tape to evaluate. If the quality of the sample tape is not satisfactory, an organization and vendor shall resolve the deficiency.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-11, 53-06.1-17

99-01.2-08-05. Distributing and removing chips.

1. A fill slip must be used to distribute chips from a chip bank to a table and a credit slip to return chips from the table to the chip bank. An organization may not transfer or exchange chips directly between two tables. An organization shall use a fill and credit slip to temporarily transfer a chip tray to or from a table and jar bar. Access to a fill and credit slip must be restricted to an authorized person.
2. A fill slip and credit slip must be separate forms. Fill and credit slips must be mechanically or electronically consecutively prenumbered two-part carbonless forms, be used in sequential order, and be all accounted for. Originals and copies of voided fill and credit slips must be marked "VOID" and be initialed by the preparer.
3. A fill slip must be prepared by a chip bank cashier, pit boss, or shift manager. A credit slip must be prepared by a dealer, wheel operator, pit boss, or shift manager. The original and copy of a fill and credit slip must contain:
 - a. Reference to twenty-one or paddlewheels, date and time, and any table number;
 - b. Quantity and total value of chips, by value, and grand total value of chips; and
 - c. For a fill slip, the initials of a chip bank cashier. However, if a dealer or wheel operator is the only employee on duty, this person shall initial the fill slip.

For a credit slip, the initials of a dealer or wheel operator.

4. After preparation of a fill slip, a chip bank cashier shall retain the original. However, if a dealer or wheel operator is the only employee on duty, this person shall retain the original. After preparation of a credit slip, a dealer or wheel operator shall deposit the original in a drop box.
5. If an organization has a shift manager or authorized employee on duty who is not presently dealing or operating a paddlewheel, this person shall verify the quantity and value of the chips, initial the original part of the fill or credit slip, and transfer the copy of the fill slip with the chips to a table, or transfer the copy of the credit slip with the chips to a cashier.
6. A dealer or wheel operator shall verify the information on the copy of a fill slip and, if correct, initial and deposit it in a drop box. A cashier shall verify the information on the copy of a credit slip and, if correct, initial and retain it. However, if a dealer or wheel operator is the only employee on duty, the dealer shall retain the copy of a credit slip.
7. As an option, an organization may have:
 - a. A dealer or wheel operator initial the original part of a fill slip before it is retained by a chip bank cashier; and
 - b. A chip bank cashier initial the original part of a credit slip before it is retained by a dealer or wheel operator.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-06. Chip bank services.

1. An organization shall sell chips at a table only for cash, no checks. Checks may be cashed by a cashier. Cash for chips sold must be kept separate from all other cash until it has been counted. Only a two-person audit team may access a drop box before the drop box cash count.
2. An organization shall redeem a chip for cash at the value for which it was sold, except when a chip was obtained or used unlawfully. If an organization discontinues twenty-one or paddlewheels at a site, it shall redeem its chips, at its business office or active site, for thirty days thereafter. An employee shall redeem a dealer's and wheel operator's tips through cash on hand. Unless a table has a video surveillance

system, a dealer and wheel operator shall redeem the actual chips received as tips. This rule does not prohibit pooling of tips.

3. An employee may not take any chip, including tips, to a location outside the gaming area of a site. A dealer shall redeem tips before leaving a site.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-08-07. Opening a table and accepting cash.

1. When playing cards are brought to a table, a dealer shall first approve all decks of cards. Decks must be sorted into sequence, by suit and the back of each card inspected to assure that all cards are present and none are marked, taped, bent, crimped, cut, or shaved. After approval, a dealer shall spread the cards face upwards on a table, by deck, according to suit and in sequence within the suit for review by the first player. After a player's review, the cards must be shuffled. If cards are removed from a table for any reason, they must be stored in a safe place and a dealer shall comply with this subsection when the cards are brought back to the table. If a table has been opened and no dealer is stationed at it, a dealer shall remove the cards from the table or place the cards in a discard holder or dealing shoe and securely cover them.
2. A dealer or shift manager shall inspect each dealing shoe before each day's activity. If a shoe is removed from a table for any reason, it must be stored in a safe place. If a table has been opened and no dealer is stationed at it, a dealer shall securely cover the shoe or remove the shoe from the table.
3. A dealer, upon receiving currency from a player at a table, shall:
 - a. If an organization has not installed a video surveillance system at a site, spread the currency on top of a table in full view of the player and shift manager and state the amount of currency in a voice loud enough to be heard by all players at the table. A dealer shall then take chips from a chip tray, equal in value to the currency, place the chips in a stacked manner in the inner table area with only the dealer's right hand, fan the chips, give the chips to the player and place the currency in a drop box; and

- b. If an organization has installed a video surveillance system at a site, spread each bill of currency face down and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the dealer's hands away from the currency so the currency is within a camera's view. A dealer shall then take chips from a chip tray, equal in value to the currency, place the chips in a stacked manner in the inner table area with only the dealer's right hand, fan the chips, and momentarily move the dealer's hands away from the chips so the chips are within a camera's view. A dealer shall then restack the chips, and push the chips to a player, and place the currency in a drop box.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-08. Shuffle and cut of the cards.

1. Before starting play, and after each shoe of cards is dealt, a dealer shall, in front of the players, thoroughly shuffle all the cards. Then, a dealer shall offer the stack of cards, with backs facing away from the dealer, to a random player to be cut. A player shall cut the cards by placing a cutting card in the stack at least ten cards in from either end. A dealer shall rotate the opportunity to cut the cards among all the players. If all players decline, a dealer or pit boss shall cut the cards. For a site with a video surveillance system, an organization shall standardize its dealers' procedures for shuffling and cutting cards.
2. A dealer shall take all the cards in front (towards the dealer) of a cutting card and place them in back of the stack or take all the cards in back (away from the dealer) of the cutting card and place them in front of the stack. The cutting card must be at the bottom of the stack. A dealer shall then insert an indicator card about fifty to one hundred cards from the bottom of the stack. The stack is inserted into a dealing shoe facedown. When an indicator card appears at the face of a shoe and enough cards have been dealt to complete the present hand, a dealer shall reshuffle the cards. A dealer may reshuffle the cards only if the indicator card appears or a table has been temporarily closed with no dealer stationed at the table, and is reopened.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-09. Betting.

1. An original wager must be an even dollar amount ranging from one dollar to five dollars. A wager of one dollar must be accepted and an organization may establish a maximum wager for each table. If all the tables at a site have the same betting limit, the limit must be posted. Otherwise, a plaque must be placed on top of a table indicating the maximum wager for the table. A wager that exceeds the maximum wager is valued at a table's maximum wager and the excess must be returned to a player. An organization shall post and announce a change in the maximum wager at a table with adequate notice to a player.
2. An original wager is the amount bet per hand before the first card is dealt and excludes tip betting. After the first card has been dealt, no original wager or tip bet may be changed. A separate wager may be a split, double-down, insurance bet, and tip bet.
3. Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. A player's right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each. Aces may not be resplit. A two-card twenty-one after a split is not a natural twenty-one.
4. Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces. A wager must equal the original wager. Only one additional card is dealt.
5. An organization may permit insurance betting except on a tip wager. An insurance bet is placed when a dealer's faceup card is an ace and it must be one-half the original wager. The payoff on a winning bet is two to one.
6. An organization may permit tip betting. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet which cannot be increased or doubled-down. A tip bet does not have to equal an original wager and may range from fifty cents up to a table's maximum wager. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a standoff (push).
7. If a player's wager consists of two or more values of chips, a player shall neatly stack the lowest value chip on top of the highest value chip. If the chips are improperly stacked, a

dealer shall tell the player and either the dealer or player shall properly stack the chips.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-08-10. Dealing.

1. After a shuffle, a dealer shall remove the first card face downwards and without showing its value, place it in a discard holder (burning a card) located at the dealer's right. Each new dealer at a table shall burn one card before dealing. If a table is open but there is no player, a dealer shall reshuffle the cards or burn one card when a player comes to the table. Only one of two dealing methods may be used at a site:
 - a. Hole-card-no-peek method. A dealer may not look at the face of a hole card until after all cards requested by players are dealt. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards or face downwards (hole card) to a dealer.
 - (3) A second card face upwards to each betting space with a wager.
 - (4) A second card face upwards to a dealer if the first card was dealt face downwards; or, a second card face downwards to a dealer if the first card was dealt face upwards.
 - b. No-hole-card method. A dealer may not deal a second card (hole card) to the dealer until after all cards requested by players are dealt. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards to a dealer.
 - (3) A second card face upwards to each betting space with a wager.
2. A dealer shall, starting on the dealer's left, deal the cards by removing them from a dealing shoe with the left hand, turning them face upwards and with the right hand place them

on the proper area of a playing surface; however, a dealer may deal cards to the first two betting spaces with the left hand. A player's second card and any hit card must be placed on top of the preceding card covering no more than the lower left-hand quarter of the preceding card, from the dealer's perspective. This rule does not apply to a disabled dealer.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-08-11. Playing.

1. After the first two cards have been dealt to each betting space and if a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. A dealer shall reposition the chip 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. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an insurance bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. A payoff must be done according to subdivision a of subsection 16. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a standoff (push). This rule does not apply if an insurance bet is not permitted.
2. A dealer may announce the dealer's faceup card one time to all the players at a table. Then, a dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split or double-down, or both. As a prompt, a dealer may announce the point total of each player's hand. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. For doubling-down on a hand, a player shall place a chip vertical to an original wager. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.
3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:
 - a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip

bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt.

- b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt. However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.
4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.
5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.
6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet assigned to it. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
8. If a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.
9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.

10. If the decisions of all players have been carried out, a dealer shall turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer (no-hole-card method). However, for the no-hole-card method, a dealer may not remove the dealer's second card from a dealing shoe until the dealer first announces that it is the dealer's card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:

a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect all the players' insurance bet chips, with the dealer's right or left hand, in one sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is

consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

- c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player wins the insurance wager at the rate of two to one. However, if a player's original hand also is a natural twenty-one, subdivision d also applies.
- d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the dealer wins all original wagers and tip bets (organization wins tip bets), unless a player's original hand also is a natural twenty-one which results in a standoff. All other players lose.
- e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a standoff. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.
- f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.
- g. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.

- h. If a dealer's hand busts, the remaining players with active hands win.
11. If a player's original hand is a natural twenty-one and a dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.
 12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a standoff - no payoff is made, including on a tip bet.
 13. If a player's hand loses against a dealer's hand, an organization wins any tip bet. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands, including any tip bet, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands, including any tip bet, with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.
 14. If a player's hand wins against a dealers' hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from a chip tray according to subsection 15 or 16.
 15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:
 - a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.
 - b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.

- c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.
 - d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.
 - e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.
 - f. Tip bet. A payoff chip must be placed beside the tip bet chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.
16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:
- a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty, a dealer may, for a player that has split or doubled-down, or both, fan only one of the player's winning wagers. A dealer shall reposition a tip bet chip in the inner table area with the dealer's left hand and fan the tip bet. A dealer may, at an organization's option that is consistently applied at a site, fan the tip bets after the payoff procedure has been done on all winning players' hands. A dealer shall, with the dealer's right hand, take a chip from a chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chip in a stacked manner beside the wagered fanned chips, fan the payoff chips toward the dealer or side, and move the dealer's hands away from the chips. A dealer shall repeat this procedure for each separate winning hand.
 - b. After the payoff procedure has been done on all winning players' hands and the tip bet chips have been fanned, a dealer shall, with the dealer's right hand, take a chip from a chip tray of the same value as the tip bet chip, place the payoff chip in a stacked manner beside the fanned chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according

to subsection 17, the dealer shall place the chips directly in a tip receptacle.

17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand-by-hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.
18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:
 - a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.
 - b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take out of the tip receptacle only the chips to be exchanged. A dealer shall place those chips in the inner table area at the dealer's left; sort, stack, and fan the chips; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the table. As an option, a dealer for the next shift may exchange the present dealer's tips.
19. A dealer may not allow a player to touch a card.
20. A dealer may not switch or remove a player's card or chip, pay on a standoff, or do anything to alter a fair and legal outcome of a betting hand.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-08-12. Dealing mistakes. Unless an organization has an alternative written policy, these procedures must be applied for dealing mistakes:

1. A card found turned face upwards in a dealing shoe must be burned.
2. If no cards are dealt to a player's betting space containing a wager, the betting space is inactive for the round. If only one card is dealt to a player's betting space, at the player's option, a dealer shall deal a second card to the player after all other players have received a second card. Otherwise, a player's betting space is inactive and the card dealt must be burned.
3. If a dealer deals a card to an inactive betting space and continues dealing cards to active betting spaces, the dealer shall burn the card dealt to the inactive betting space.
4. If a dealer misses dealing the dealer's first or second card, the dealer shall continue dealing the first two cards to each player, and then deal the proper number of cards to the dealer.
5. If a dealer does not ask a player if the player desires to place an insurance wager and the hand is played, the hand is valid.
6. If a dealer drops a player's or dealer's card off a table, the dealer shall burn the card.
7. A card drawn from a dealing shoe in error without the card's face being exposed to any player must be used as if it were the next card from the shoe.
8. After the first two cards are dealt to each player and a card is drawn from a dealing shoe in error with the card's face exposed to any player, the card must be burned.
9. If there is an insufficient number of cards remaining in a dealing shoe to complete a round of play, all of the cards in a discard holder must be shuffled and cut, the first card must be burned, and a dealer shall complete the round of play.
10. If a dealer has a count of at least seventeen and draws a hit card, the card must be burned.
11. If a dealer permits a player to wager an unlawful amount and the player's hand wins, the dealer shall return the improper portion of the wager to the player. A dealer shall value a player's hand at the proper wager for the payoff. However, if a dealer permits a player to wager fifty cents and is dealt a card, the dealer shall return the fifty cents to the player and burn the card.

12. After a round of play, if a dealer or player suspects that the dealer miscounted the dealer's or player's hand, the dealer shall play back the cards.
13. If a dealer does not burn a card at the beginning of dealing a shoe, the dealer shall burn the card after the first complete round of play.
14. If a dealer's facedown card is exposed to any player before the decisions of all the players are carried out, the dealer shall burn the card and, after the decisions of all the players have been carried out, draw a new facedown card.
15. If a dealer misses dealing a player a hit card, the dealer shall continue dealing any requested hit cards to all other players and then deal a hit card to the player who was missed.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-13. Posting. These rules and notice must be posted:

HOUSE RULES

Use Hole-Card-No-Peek method of dealing

- or -

Use No-Hole-Card method of dealing (Choose one when posting)

PLAYER RULES

Must compute the card count of the player's hand

Must be twenty-one years of age or older

Hand signals must be used

No touching of cards

Two betting spaces maximum

No side bets

No payoff on tie counts

Splitting on any pair and 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

- or -

Insurance permitted - pays 2 to 1 (Choose one when posting)

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

NOTICE

If a player uses a fraudulent scheme or technique to cheat or skim involving twenty-one, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.1, 53-06.1-10, 53-06.1-17

99-01.2-08-14. Drop box cash count.

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. An empty drop box, when not used during a shift, may be stored on a table. Otherwise, an empty drop box must be stored in a safe storage place.
2. A drop box must be opened by a two-person count team. The persons must be independent of each other. A count team may be an independent person, including a representative of a financial institution, and an employee; two representatives of a financial institution; two nongaming employees; or two gaming employees provided they conduct games at different sites. A count team may not be two persons who have a direct supervisor and subordinate relationship or include an employee of a lessor unless this employee conducts games as an employee of the organization. A count team member may not be a common household member, spouse, child, parent, brother, or sister of the other count team member.
3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.
4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. Then, one person shall record the

count and the other person shall verify the recorded amount, and both persons shall initial and date the cash count report.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-15. Tournaments. An organization shall conduct a tournament according to these rules, which must be posted:

1. An organization shall set a minimum player buy-in amount for the preliminary and championship rounds or for the tournament and set the number of shoes or hands to be played. A player shall register before participating and the player may be charged an entry fee.
2. An organization may assign a player one or two betting spaces. An organization may use a rotating button to signify the order of betting. If a button is used, it must move clockwise one position after each hand.
3. A player may not move from table to table, temporarily stop playing, or transfer chips to or from another player. A bet must be made on each hand. A player shall play with chips issued for the tournament and keep the chips on top of a table. A player may not cash out before the end of play unless the player withdraws.
4. A player's score is the difference between the player's buy-in amount and value of the chips redeemed. An organization may advance players with the highest scores from each preliminary round to the next round or championship round. An organization shall post all the players' scores at the end of a tournament. A player with the highest score, based on preliminary rounds or a championship round, wins. A cash or merchandise prize may be awarded.
5. An organization's decision on a dispute is final.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-08-16. Recordkeeping.

1. For each day's activity, records must include:
 - a. The starting and ending cash and chip banks according to section 99-01.2-03-06;
 - b. The activity of each table;

- c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and
 - d. For a video surveillance system, dealer percent-of-hold information, videotape inventory log, and videotape review record. These records must be retained for one year from the end of the quarter of activity; however, a videotape review record must be retained for thirty days.
- 2. Chip inventory records according to section 99-01.2-03-09.
 - 3. The cash profit (see subdivision h of subsection 6 of section 99-01.2-02-01) must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-09
POKER**

Section	
99-01.2-09-01	Poker
99-01.2-09-02	Limitations and Fees
99-01.2-09-03	Posting
99-01.2-09-04	Recordkeeping

99-01.2-09-01. Poker. Poker is a card game dealt by one dealer. A player bets on the cards (hand) the player holds. All bets are collected together in the center of the table which is the pot. There may be an initial ante round and a blind bet by players. Then, after players receive their starting cards and after each round of new cards, there is a betting round. Each round, a player decides whether to continue contending for the pot by calling or raising the bet. After all the dealing of cards and betting has occurred and there are two or more players still in contention, there is a showdown to determine which player has the best hand. The object is for a player to win the pot by making a bet no other player is willing to match or for the player to have the most valuable hand after all the betting is over. Based on the type of game, a winning player may hold the highest ranked hand, lowest ranked hand, or divided between the highest and lowest ranked hands. Cards and hands are ranked according to the normal rules of poker.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-09-02. Limitations and fees.

1. An organization may only conduct poker on two occasions per year. An occasion may include more than one site. A nontournament occasion is a twenty-four-hour period of play. A tournament occasion is a consecutive three-calendar-day period of play.
2. For nontournament play, if an organization does not provide a dealer, players must use cash. For a tournament, an organization shall provide a dealer and use value chips.
3. For nontournament play, an organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. For tournament play, an organization may charge a player an entry fee not to exceed

one hundred dollars in place of or in addition to the fee.
The fee schedule must be posted on a site.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

99-01.2-09-03. Posting. These rules must be posted:

HOUSE RULES

- Must use one deck of cards
dealt out of the hand
- Must use a cut card to conceal the bottom card of the deck
- May allow a blind bet and set a minimum table limit
- May allow an ante up to one dollar and set a minimum ante
- May allow a maximum of three raises per round
- Must limit each raise to an amount equal to
or greater than the original bet; however, each
raise must be equal to or greater than the original
bet of that betting round

PLAYER RULES

- Must be twenty-one years of age or older
- No side bets or credit

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.1, 53-06.1-07.2, 53-06.1-17

99-01.2-09-04. Recordkeeping.

1. For each poker occasion, records must include:
 - a. The starting and ending cash on hand according to section 99-01.2-03-06;
 - b. Except if an organization only charges a fixed entry fee for tournament play, for each one-half hour interval of each table the fees collected and number of players;
 - c. Name, initials, and time worked of the employee who collected the fee; and
 - d. A summary of gross proceeds, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return.

2. The cash profit (see subdivision i of subsection 6 of section 99-01.2-02-01) must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-10
CALCUTTAS**

Section

99-01.2-10-01

Calcutta

99-01.2-10-02

Recordkeeping

99-01.2-10-01. Calcutta. A "calcutta" is a sporting event of two or more competitors in which players wager at an auction on the performance of the competitors. The conduct of a calcutta is the auction. An auction pool is comprised of the wagers paid by players who offered the highest bid to the auctioneer on the competitors. When the event is over, the auction pool is distributed to the player who had wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.
2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event and manner of distributing the auction pool as a prize. An organization shall post the requirements of the players on the site.
3. Each competitor in a sporting event must be identified before the auction begins. A competitor may also be a player who may wager on oneself.
4. Each competitor listed on a calcutta board must be offered through an auction to prospective players. A player who offers the highest bid for a particular competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may only be auctioned off to one player.
5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.

6. An organization shall conduct an auction at its site and a player must be present to bid. An organization may conduct an auction where the sporting event is held provided it is an authorized site.
7. The sequence of the verbal bid auction must be determined by a random drawing of the numbers assigned each line.
8. Before an auction, an employee shall:
 - a. Verbally announce and post the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and
 - b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.
9. If a competitor is not bid on by a player, an organization may sell the competitor by these methods:
 - a. If there is more than one competitor not bid on, place the competitors in one or more groups and auction a group as one competitor; or
 - b. Allow a competitor to purchase oneself for a predetermined minimum wager.
10. An employee shall provide each player who wagered on a competitor the original part of a two-part consecutively numbered receipt containing this information:
 - a. Name or organization;
 - b. Receipt number;
 - c. Name and address of the player and wagered amount;
 - d. Name of the competitor who the player wagered on;
 - e. Name of sporting event and date of the calcutta; and
 - f. Initials of the employee who completed the receipt.
11. After an auction, an employee shall complete this information for each line on a board, and total the amounts wagered:
 - a. Name of the player who bought the competitor; and
 - b. Amount wagered by the player.

12. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player.
13. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. The winning player shall redeem the receipt referenced by subsection 10 unless an organization mails a prize to the player. An organization may award the prize to a winning player where the event is held.
14. When a player (bidder) wins a cash prize greater than two hundred dollars, an employee shall record the win according to section 99-01.2-03-08.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-07.3, 53-06.1-17

99-01.2-10-02. Recordkeeping.

1. For each calcutta, records must include:
 - a. A calcutta board indicating the winning competitor and player. The board must be retained for one year from the end of the quarter of activity;
 - b. The starting and ending cash on hand according to section 99-01.2-03-06;
 - c. The copy part of all the receipts;
 - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return; and
 - e. Record of win according to section 99-01.2-03-08.
2. Inventory records according to section 99-01.2-03-09.
3. The cash profit (see subdivision j of subsection 6 of section 99-01.2-02-01) must be deposited according to section 99-01.2-03-10.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01.2-11
PADDLEWHEELS

Section	
99-01.2-11-01	Paddlewheels
99-01.2-11-02	Paddlewheels - Excluding the Use of a Table
99-01.2-11-03	Paddlewheel
99-01.2-11-04	Table
99-01.2-11-05	Chips
99-01.2-11-06	Opening and Closing a Table
99-01.2-11-07	Number of Employees, Distributing and Removing Chips, Chip Bank Services, and Procedure for Accepting Cash
99-01.2-11-08	Betting
99-01.2-11-09	Conduct and Play
99-01.2-11-10	Posting
99-01.2-11-11	Drop Box - Transportation, Storage, and Cash Count
99-01.2-11-12	Recordkeeping

99-01.2-11-01. Paddlewheels. Paddlewheels must be conducted and played according to these two methods:

1. Paddlewheels may be a game in which a prize cannot be a variable multiple of the amount bet. The ticket must contain one or more numbers or symbols corresponding to a paddlewheel. The number or symbol on a ticket may not be duplicated on any other ticket of the same card. No chips may be used. Cash or merchandise prizes may be awarded. Sections 99-01.2-11-02 and 99-01.2-11-12 also apply to this method of paddlewheels.
2. Paddlewheels may be a table game in which a prize is a predetermined variable multiple of the amount bet. No merchandise prize may be awarded. Chips must be used to buy tickets. Sections 99-01.2-11-03 through 99-01.2-11-12 also apply to this method of paddlewheels.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-07.4, 53-06.1-17

99-01.2-11-02. Paddlewheels - Excluding the use of a table. This section applies to the method of paddlewheels described by subsection 1 of section 99-01.2-11-01.

1. All paddlewheel tickets must be preprinted, detachable from a paddlewheel ticket card, and contain one or more numbers or symbols corresponding to a paddlewheel. A number or symbol cannot be repeated on any of the tickets of a card number. A ticket must have a game serial number corresponding to the number printed on the ticket card's stub. A master flare for

a series of paddlewheel ticket cards must state the type of paddlewheel tickets, cost per ticket, range of card numbers, have a state gaming stamp affixed to it bearing the card number of the lowest numbered ticket card, and be posted.

2. The maximum price per ticket is two dollars. All the tickets of a series of paddlewheel ticket cards must be sold for the same price and the tickets cannot be discounted. A person may not be required to buy more than one ticket. All tickets must be sold on a site the day the game is conducted. All the tickets of a card must be sold before a spin. Otherwise, an employee shall refund the gross proceeds in exchange for the players' unplayed tickets.
3. A winner must be determined by spinning a paddlewheel. An organization may spin a paddlewheel multiple times to award multiple prizes for one paddlewheel ticket card. A paddlewheel must make at least four revolutions. Otherwise, the spin is void and the paddlewheel must be spun again.
4. No cash prize may be a variable multiple of the price of a ticket. No cash prize or the retail price of a merchandise prize for one winning ticket may exceed one hundred dollars. After a prize payoff, an employee shall record the date, winning number, cash prize amount or description of a merchandise prize, and retain the winning ticket.
5. All paddlewheel ticket cards of a series related to the same master flare must be reported on the tax return in the quarter in which the series was first played. An organization may not carry over a partial series of paddlewheel ticket cards to another quarter. Any cards of a series which remain unsold during a quarter when other cards of that series were sold must be retained as part of the accounting records, and cannot be used or disposed.
6. These rules must be posted:
 - a. A player may not bet tickets that exceed a value of twenty dollars for one spin.
 - b. A paddlewheel must make at least four revolutions.
 - c. A winning player is not required to be present when the paddlewheel is spun; however, the player must claim a prize within one hour of the drawing.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01.2-11-03. Paddlewheel.

1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches [76.2 centimeters] in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty but may contain no more than eighty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch [15.88 millimeters] in height.
2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01.2-11-04. Table.

1. The colored numbers or symbols on a table playing surface must be at least two inches [5.08 centimeters] in height. A table must have a rail for holding a player's chips.
2. A playing surface must be permanently imprinted with colored numbers, symbols, or sets of colored numbers or symbols relating to each circle of a paddlewheel. A set of colored numbers or symbols is a line bet. A table may have a space for "ODD" and "EVEN" bets.
3. A table must have a retaining device for each ticket bet. A table must have a "drop box" that meets the specification of subsection 5 of section 99-01.2-15-02. A drop box must have a money plunger which must remain in the slot unless the plunger is used.
4. Unless an organization posts prize information according to subsection 2 of section 99-01.2-11-10, each number, symbol, and set of numbers or symbols, including any odd or even bet,

of a table must state the prize payoff. The payoff is the relationship of the prize to a one dollar ticket and must be stated as "_____ to _____".

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01.2-11-05. Chips.

1. An organization may issue chips in values of fifty cents, one dollar, two dollars, five dollars, twenty-five dollars, and one hundred dollars and the chips must be identical to twenty-one chips at a site.
2. Each chip must be round in shape, be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips from other organizations' chips.
3. Each value of chip must have the following prescribed primary color when the chips are viewed both in the daylight and under incandescent light. Along with the primary color, a chip must have one or two contrasting secondary colors as edge spots. Edge spots must be visible on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:
 - a. Twenty-five dollar chip - green which is the color classified as 2.5G 5/12 on the munsell system of color coding. A twenty-five dollar chip must have eight solid edge spots and each edge spot must be five-thirty seconds of one inch [4.06 millimeters] in width.
 - b. One hundred dollar chip - black which is the color classified as N 2/ on the munsell system of color coding. A one hundred dollar chip must have four triple split edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width. Each of the three split portions of an edge spot and the two spaces between the three split portions must be one-sixteenth of one inch [1.52 millimeters] in width. The three split portions of an edge spot must be the secondary color and the two middle spaces may either be the primary color or a third color.

4. An employee shall safeguard chips by placing them in a safe storage area or, if a table has been opened and no wheel operator is stationed at it, secure the chip tray with a locking cover.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-11-06. Opening and closing a table. To open a paddlewheel table, an employee shall inspect each peg and the pointer of a paddlewheel for uneven wear, immediately replace any worn peg or pointer, and evaluate the balance of a paddlewheel. To close a paddlewheel table, an employee shall collect the identification items from players and place a cover over a paddlewheel or make it inoperable.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-11-07. Number of employees, distributing and removing chips, chip bank services, and procedure for accepting cash.

1. An organization may not conduct paddlewheels unless two employees are on duty.
2. A fill and credit slip must be prepared according to section 99-01.2-08-05. Chip bank services must be provided according to section 99-01.2-08-06.
3. A wheel operator, upon receiving currency from a player at a table, shall:
 - a. Spread the currency on top of a table in full view of the player and shift manager and state the amount of currency in a voice loud enough to be heard by all players at the table; and
 - b. If a player desires to buy a ticket that is of value equal to the player's currency for the immediate next spin of a paddlewheel, a wheel operator may exchange the player's currency for a ticket. Otherwise, a wheel operator shall give a player chips equal to the player's currency. Then a wheel operator shall place the currency in a drop box.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-11-08. Betting.

1. Unless there is insufficient space for the mobility of players, there is no limit on the number of players. Otherwise, an organization may limit the number of players. An organization may require a minimum number of players to open a paddlewheel table.
2. An employee shall safeguard paddlewheel ticket cards in a safe place. If a table has been opened and no wheel operator is stationed at it, a wheel operator shall remove the cards.
3. Paddlewheel ticket cards of a series must be used in numerical sequence, by game serial number. All tickets of a series of paddlewheel ticket cards must be sold for the same price. Tickets may be sold for one dollar or two dollars for the same spin of a paddlewheel. The maximum betting limit of a player for each spin is twenty dollars. Each ticket constitutes a separate chance to win. A master flare for a series of paddlewheel ticket cards must state the various wagers that may be placed according to a colored number or set of colored numbers, cost per ticket, and range of card numbers; have a state gaming stamp affixed to it bearing the card number of the lowest numbered ticket card; and be posted.
4. Except for applying subdivision b of subsection 3 of section 99-01.2-11-07, a player shall first buy a ticket with a chip. A player may use an organization's twenty-one chip to buy a paddlewheel ticket. A player shall buy tickets by placing the player's chips in a stack on a table and sliding the stack toward and within reach of a wheel operator. Then, the wheel operator shall count the value of the player's chips by breaking the stack down, placing the chips in front of the chip tray, and tearing off one or more tickets from a ticket card equal in value to the chips. A wheel operator shall count the value of the tickets in front of the player, place the tickets on the table within reach of a player, and place the chips in the chip tray.
5. When a player first buys chips, a wheel operator shall provide the player with an item involving a unique number, symbol, or color and advise the player how to mark the back of the player's ticket. When the player stops playing, the player shall return the item to a wheel operator.
6. Unless an organization has a restrictive posted policy, a player may bet tickets on any particular spin. A player with a ticket may not leave the gaming area of a site. Unless an organization has a restricted policy, a player may bet more than one ticket on the same colored number or symbol or set of colored numbers or symbols for a spin. A ticket must be bet on the day it is bought. Otherwise, the ticket is void and the player shall surrender the ticket to a wheel operator who shall deface or tear the ticket in half and discard it. To bet, a player shall place a ticket in or on a betting space of

a table. A bet that exceeds a value of twenty dollars on a spin or exceeds an organization's maximum wager is void and a player's tickets in excess of the limit are not reusable. A wheel operator may place a ticket for a player if the wheel operator first states, in a voice loud enough to be heard by all the players at a table, that the player is being assisted.

7. A wheel operator may sell tickets of a previous and new series for a particular spin if the flare for the new series has the same prize payout as the flare of the previous series. The flares of both series must be posted for the one spin. Then, the old flare must be removed. If a ticket has been sold from a card but other tickets of that card remain unsold by the last spin of the day, the unsold tickets must be voided.
8. After all the players have bought a ticket and before a paddlewheel is spun, a wheel operator shall announce that the players' bets for the next spin must now be placed.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01.2-11-09. Conduct and play.

1. When a wheel operator has determined that no other person desires to buy a ticket, the wheel operator shall announce bets closed. Thereafter, a player may not bet or touch any placed ticket. A wheel operator shall double spin a paddlewheel by pulling it in a downward or upward direction and releasing it. While the paddlewheel is in motion, a wheel operator shall again pull it in a consistent downward or upward direction. As an option, a wheel operator may, while a paddlewheel is slowly spinning in either direction, single spin a paddlewheel in a consistent direction. A paddlewheel must rotate at least four full unrestricted revolutions. Otherwise, the spin is void and a paddlewheel must be spun again.
2. When a paddlewheel stops, a wheel operator shall announce the winning colored number or symbol in a tone of voice loud enough to be heard by all the players at a table. The announcement must be in sequence of the outermost circle first to the innermost circle last. A wheel operator shall first remove all losing tickets from the table, tear them in half, and discard them. Then, a wheel operator shall pay off the winning tickets in the sequence of the lowest payoff bet first to the highest payoff bet last or in the sequence of the payoff bets that are most accessible to the players first and to the payoff bets that are least accessible to the players last. To pay off a winning ticket a wheel operator shall:

- a. Take a winning ticket from a betting space and ensure that its game serial number is within the range of the game serial numbers of the cards sold that day;
 - b. Circle or record the winning colored number or symbol on the face or on the backside of a winning ticket with a nonerasable marker;
 - c. Pay off a winning ticket, according to the procedure of subsection 3, to the player who bought the ticket based on the unique number, symbol, or color written on the back of the ticket. The player who possesses the item containing the unique number, symbol, or color shall show the item to the wheel operator before the payoff; and
 - d. Record on the face or backside of a winning ticket the prize amount and initial it.
3. For a payoff, a wheel operator shall take chips from the chip tray equal to the prize amount of a winning ticket, stack the chips in front of the chip tray, fan and count out the chips, and restack the chips. A wheel operator shall slide the stack of chips toward and within reach of the winning player. A tip for a dealer must be made with a chip.
 4. A wheel operator shall band winning tickets of a series of paddlewheel ticket card stubs together. If a winning ticket is unclaimed, it must be treated as a losing ticket.
 5. A series of paddlewheel ticket cards must be reported on a tax return for the quarter in which it was first played. An organization may not carry over a partial series of paddlewheel ticket cards into two or more quarters and shall retain any unused ticket cards as part of its records.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01.2-11-10. Posting.

1. These rules must be posted:
 - a. A chip dropped into a table betting slot may be retrieved according to house policy (this must be posted if betting slots are used).
 - b. A player may not bet tickets that exceed a value of twenty dollars for one spin.
 - c. A player must write the player's unique number, symbol, or color on the back of each purchased ticket.

- d. A player must bet by placing a ticket in or on a betting space.
 - e. A player may not touch a ticket after the wheel operator announces "bets closed".
 - f. A paddlewheel must make at least four revolutions.
 - g. If a pointer stops on top of a peg, the number preceding the peg is the winning number.
 - h. A winning odd or even bet is determined by a winning number of only the designated colored circle. However, a player loses all odd and even bets if the pointer stops on a designated house number. This must be posted if an odd or even bet is accepted.
 - i. A player must be present to win according to house policy.
2. Except as otherwise provided by this rule, prize payoff information must be posted. The information must reference each differently colored number or symbol and each different set of colored numbers or symbols, including an optional odd or even bet, and state each prize payoff. The payoff is the relationship of the prize to a winning one dollar ticket. The payoff must be stated as " to " or " for ". For example, for a red colored number or symbol which pays forty dollars for a winning one dollar ticket, the information must reference the red colored number or symbol and state the payoff as "EXACT NUMBER RED 40 to 1". In place of posting prize information, an organization may apply subsection 4 of section 99-01.2-11-04.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01.2-11-11. Drop box - Transportation, storage, and cash count. An employee shall transport a drop box from a table, store it, and count drop box cash according to section 99-01.2-08-14.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-11-12. Recordkeeping. Records must include:

1. The flare with winning tickets and all unsold ticket cards. They must be retained for one year from the end of the quarter in which the activity was reported on a tax return.

2. The daily starting and ending cash on hand and chip bank according to section 99-01.2-03-06.
3. The daily activity:
 - a. For each ticket card of each series of paddlewheel ticket cards described by subsection 1 of section 99-01.2-11-01, the date conducted, card number, and cash prize amount or description of a merchandise prize;
 - b. For each series of paddlewheel ticket cards described by subsection 2 of section 99-01.2-11-01, the gaming stamp number, game serial number of the lowest numbered paddlewheel ticket card of the series, beginning and last paddlewheel ticket card number sold, number of voided tickets, number of cards sold, number of tickets per card, cost per ticket, gross proceeds, prizes, and adjusted gross proceeds; and
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all series of paddlewheel ticket cards for a quarter must reconcile to the tax return.
4. Chip and series of paddlewheel ticket cards inventory records according to section 99-01.2-03-09.
5. The cash profit (see subdivisions k and l of subsection 6 of section 99-01.2-02-01) must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-12
PULL TAB DISPENSING DEVICES**

Section	
99-01.2-12-01	Use
99-01.2-12-02	Requirements of an Organization
99-01.2-12-03	Requirements of a Bar
99-01.2-12-04	Requirements of a Bar and an Organization
99-01.2-12-05	Recordkeeping

99-01.2-12-01. Use. An organization may operate a pull tab device when the organization's employee is on duty, and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-12-02. Requirements of an organization.

1. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
2. An organization shall post a notice on a site containing these rules:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning pull tab must be redeemed within fifteen minutes;
 - c. A pull tab cannot be redeemed if the pull tab has been taken from the gaming area; and
 - d. If a person solicits, provides, or receives any inside information, by any person, by any means, or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.
3. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:

- a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
 - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with sections 99-01.2-02-02 and 99-01.2-02-04 regarding a criminal history record check on the employee; and
 - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.
4. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
 5. An organization shall use the current recordkeeping system prescribed by the attorney general.
 6. An organization shall provide a bar employee a copy of sections 99-01.2-02-10, 99-01.2-02-17, 99-01.2-02-18, 99-01.2-12-03, and 99-01.2-12-04 regarding the bar employee's duties and restrictions.
 7. An organization shall have a rental agreement conforming to section 99-01.2-02-12.
 8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
 9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan must be made by check and be interest free. An organization may not access the loaned money. The duration of the loan must be until an organization discontinues conducting pull tabs at a site through a device. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An employee may not use a bar's cash on hand for redeeming a winning pull tab.
 10. An organization may not provide an independent service technician a key to access a device.

11. If a theft of currency occurs, an organization shall record the currency accounting meter or print a cash withdrawal report for law enforcement purposes.
12. When a game is closed:
 - a. The game must be reported on a tax return for the site at which it was closed;
 - b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and
 - c. If the game has unsold pull tabs, these cannot be put back into play.
13. An organization or employee may not:
 - a. Modify the assembly or operational functions of a device;
 - b. Remove or transfer a device from a site without notifying the attorney general within fourteen days of removing or transferring the device;
 - c. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
 - d. Designate a pull tab to entitle a player who buys it with a prize provided by a bar; or
 - e. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
14. A game must be conducted and played as follows:
 - a. Except for a game serial number and color of the pull tabs, the deals must be identical;
 - b. At least one and one-half deals must be placed in a device at the same time at the start of a game. Pull tabs from one deal must be placed in two of the stacking columns until full and at least one-half of the pull tabs from a second deal must be placed in two other stacking columns. Next, any leftover pull tabs from the first deal must be placed in a remaining empty column, if any. Then, the number of pull tabs in each column must be evened out by transferring pull tabs from column to column;
 - c. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;

- d. An employee shall add a new or partial deal of pull tabs to a device by taking the unsold pull tabs of previous deals from all, except two, of the columns and placing those pull tabs on top of the unsold pull tabs of those two columns. Next, the employee shall place any overflow pull tabs and the new or partial deal's pull tabs in the empty columns until full and then place the deal's pull tabs in those two other columns. Then, the number of pull tabs in each column must be evened out by transferring pull tabs from column to column. If a partial deal is added to a game, the remaining pull tabs of that deal must be added to the game next and before the game is closed;
- e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
- f. If a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site or all the top tier winning pull tabs have been redeemed and:
 - (1) Fifty deals have been added to a game;
 - (2) A game's actual gross proceeds is twenty-five thousand dollars; or
 - (3) A game has been in play for twenty-five consecutive calendar days; and
- g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low level switches in all but two columns of a device have been triggered, an organization may close a game for the present quarter within fourteen calendar days before the end of the quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-12-03. Requirements of a bar.

1. A bar shall:
 - a. Place a device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device;
 - b. Prohibit a person from tampering or interfering with the operation or play of a device;
 - c. Have the electrical current to a device turned off unless alcoholic beverages may be dispensed and a bar employee or an employee is available to redeem a winning pull tab;
 - d. Absorb a loss related to a counterfeited or lost pull tab, redeemed pull tab that was not bought at the site, and loss or theft of the temporary loan of funds;
 - e. Repay an organization's temporary loan of funds within fourteen days of when the organization discontinues conducting pull tabs through a device at a site; and
 - f. If a device malfunctions, turn the device off and promptly notify an organization.
2. Except to withdraw currency or a drop box according to subsection 3 of section 99-01.2-12-02, a bar employee may not access, attempt to access, or permit a person, other than an employee of an organization, to access the interior of a device.
3. If a bar employee believes that a deal is defective or there is a problem with a redeemed pull tab, the bar employee shall contact an organization and may turn a device off.
4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is responsible for a player's check returned by a financial institution as uncollectible. A bar may allow a player to buy back the player's check with cash and may return a player's check to the player as part of a prize payout.
5. Only a bar employee who is authorized by a bar may redeem a winning pull tab.
6. Except to make a record of win or prepare a credit redemption register, a bar employee may not perform an organization's recordkeeping or audit functions.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-12-04. Requirements of a bar and an organization.

1. A bar employee or an employee shall:
 - a. Deface a winning number, symbol, or set of symbols of a pull tab when it is redeemed; and
 - b. Record the win for a redeemed winning pull tab valued in excess of two hundred dollars according to section 99-01.2-03-08. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern.
2. A bar employee or an employee may not:
 - a. Assist a player in opening a pull tab except to assist a disabled player;
 - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;
 - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
 - d. Publicly display a redeemed pull tab; or
 - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall retain and void the pull tab.
3. A prize must be cash.
4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
5. A bar employee and an organization shall document the number and value of redeemed winning pull tabs, by value, that are exchanged for cash. These pull tabs must be segregated by interim period.

6. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a device. An organization shall post a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be:
 - a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tags, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values.
 - b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The information must be continually updated.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-12-05. Recordkeeping.

1. For each game, records must include:
 - a. The flares and all redeemed winning and unsold pull tabs. An organization may not open an unsold or defective pull tab. These records must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
 - b. The game information sheet for each deal;
 - c. A record of game serial numbers for each game;
 - d. Record of win according to section 99-01.2-03-08;
 - e. Credit redemption register;
 - f. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand according to section 99-01.2-03-06 and prizes redeemed;

- g. Interim period site summary, including meter readings, deals added, currency withdrawn, redeemed prizes by denomination, cash profit, and bank deposit;
 - h. Summary, including cumulative prizes, cash profit, bank deposits, and redeemed top tier pull tabs by game serial number;
 - i. Inventory records according to section 99-01.2-03-09; and
 - j. Access log.
2. A summary of ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all games for a quarter must reconcile to the tax return.
 3. The cash profit (see subdivision d of subsection 6 of section 99-01.2-02-01) for an interim period must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-13
BINGO CARD DISPENSING DEVICES**

Section	
99-01.2-13-01	Use
99-01.2-13-02	Requirements of an Organization
99-01.2-13-03	Requirements of a Bar
99-01.2-13-04	Requirements of a Bar and an Organization
99-01.2-13-05	Recordkeeping

99-01.2-13-01. Use. An organization may operate a bingo card device when the organization's employee is on duty, and may have a bar employee redeem a winning bingo card when the organization's employee is or is not on duty.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-13-02. Requirements of an organization.

1. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
2. An organization shall post a notice on a site containing these rules:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning bingo card must be redeemed within fifteen minutes;
 - c. A bingo card cannot be redeemed if the card has been taken from the gaming area; and
 - d. If a person uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail, or both.
3. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:
 - a. A device's cash compartment is separate from its bingo card and accounting meter compartments;

- b. The organization authorizes a specific employee of a bar to withdraw cash and complies with sections 99-01.2-02-02 and 99-01.2-02-04 regarding a criminal history record check on the employee; and
 - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.
4. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
 5. An organization shall use the current recordkeeping system prescribed by the attorney general.
 6. An organization shall provide a bar employee a copy of sections 99-01.2-02-10, 99-01.2-02-17, 99-01.2-02-18, 99-01.2-13-03, and 99-01.2-13-04 regarding the bar employee's duties and restrictions.
 7. An organization shall have a rental agreement conforming to section 99-01.2-02-12.
 8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend or a test validation of currency, the person shall record the value of bingo cards and currency validated. An organization shall retain the log in a device during the quarter of activity.
 9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning bingo card. A loan must be made by check and be interest free. An organization may not access the loaned money. The duration of the loan must be until an organization discontinues conducting bingo cards at a site through a device. The amount reimbursed to a bar must equal the value of redeemed winning bingo cards which the bar provides an organization. An employee may not use a bar's cash on hand for redeeming a winning card.
 10. An organization may not provide an independent service technician a key to access a device.
 11. The attorney general may authorize an organization to close a game at any time.
 12. If a theft of currency occurs, an organization shall record the currency accounting meter or print a cash withdrawal report for law enforcement purposes.

13. When the bingo activity is closed:
 - a. The activity must be reported on a tax return for the site at which it was closed;
 - b. An employee shall buy back all remaining redeemed winning bingo cards from a bar; and
 - c. If the game has unsold bingo cards, these cannot be put back into play.
14. An organization or employee may not:
 - a. Modify the assembly or operational functions of a device;
 - b. Remove or transfer a device from a site without notifying the attorney general within fourteen days of removing or transferring the device;
 - c. Use or continue to conduct a deal of bingo cards after being notified by a distributor of a ban or recall of the deal;
 - d. Designate a bingo card to entitle a player who buys it with a prize provided by a bar; or
 - e. Intentionally test vend currency or bingo cards to synchronize nonresettable accounting meters.
15. Bingo must be conducted and played as follows:
 - a. An employee shall ensure that all the bingo balls are present and draw or predraw numbers for the pattern related to a prize flare. An employee shall record a control number (sequential number used to track sets of called bingo numbers), device serial number, winning pattern and prize on a prize flare that may or may not have a state gaming stamp affixed. The called numbers must be recorded on a two-part record of called bingo numbers form. A set of called bingo numbers may be used to complete more than one record of called bingo numbers form for use at more than one site if the forms are used at the same time for the same winning pattern. The original of the form must be forwarded to a bookkeeper;
 - b. If a prize flare is not scheduled to be posted immediately:
 - (1) The copy of the record of called bingo numbers form must be placed in an envelope attached to the prize flare. The envelope must reference the site, control number, and dates and times when the prize flare is scheduled to be posted. An organization shall

safeguard the envelope and prize flare until they are used; and

- (2) When a prize flare is scheduled to be posted, an employee shall forward the copy of the record of called bingo numbers form to a bar employee or an employee who will redeem a winning card. A new prize flare may be posted at any time;
- c. If a prize flare is scheduled to be posted immediately:
- (1) A bingo caller shall announce to players that the bingo numbers to be called relate to the prize flare involving a device; and
 - (2) A bingo caller shall forward the copy of the record of called bingo numbers form to a bar employee or an employee who will redeem a winning bingo card;
- d. A prize flare must be securely posted on or adjacent to a device. The numbers on a record of called bingo numbers form must be posted on a device's flashboard. Two employees or one employee and any neutral person shall verify that the bingo numbers are correctly displayed. This verification must be acknowledged by both persons who shall, in the presence of each other, initial and date a prize flare. One of these persons shall write the time and date when the prize flare is posted;
- e. If there is a difference in the numbers posted in relation to the record of called bingo numbers form, the numbers on the form are controlling;
- f. An organization shall post one of these statements:
- (1) "If a bingo card contains multiple winning patterns, only the pattern related to the largest prize amount will be paid";
 - (2) "A bingo card may contain multiple winning patterns if the patterns do not overlap"; or
 - (3) "A bingo card may contain multiple winning patterns and the patterns may overlap";
- g. Except for a distributor, a person may not adjust a device's internal clock;
- h. Bingo gross receipts includes sales tax;
- i. An employee may not modify a prize flare, use a prize flare that is altered or in a questionable condition, or modify a game serial number written on a gaming stamp;

- j. An organization shall close the bingo activity by the end of a quarter or within fourteen calendar days before the end of the quarter. An organization may start bingo activity for the next quarter within fourteen calendar days before the start of that quarter;
- k. An organization shall provide a bar employee and an employee with a bingo card master checkbook;
- l. When a prize flare is discontinued, an employee shall write the time and date on the prize flare and initial it; and
- m. If an organization replaces a prize flare during a day, an employee shall, fifteen minutes before the scheduled posting, turn a device off and verbally announce that players must redeem winning cards by the posting time.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-13-03. Requirements of a bar.

1. A bar shall:
 - a. Place a device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device;
 - b. Prohibit a person from tampering or interfering with the operation or play of a device;
 - c. Have the electrical current to a device turned off unless alcoholic beverages may be dispensed and a bar employee or an employee is available to redeem a winning card;
 - d. Absorb a loss related to a counterfeited or lost bingo card, redeemed bingo card that was not bought at the site, and loss or theft of the temporary loan of funds;
 - e. Repay an organization's temporary loan of funds within fourteen days of when the organization discontinues conducting bingo through a device at a site; and
 - f. If a device malfunctions, turn the device off and promptly notify an organization.
2. Except to withdraw currency or a drop box according to subsection 3 of section 99-01.2-13-02, a bar employee may not access, attempt to access, or permit a person, other than an

employee of an organization, to access the interior of a device.

3. If a bar employee believes that a deal is defective or there is a problem with a redeemed bingo card, the bar employee shall contact an organization and may turn a device off.
4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is responsible for a player's check returned by a financial institution as uncollectible. A bar may allow a player to buy back the player's check with cash and may return a player's check to the player as part of a prize payout.
5. Only a bar employee who is authorized by a bar may redeem a winning bingo card.
6. Except to make a record of win or prepare a credit redemption register, a bar employee may not perform an organization's recordkeeping or audit functions.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-13-04. Requirements of a bar and an organization.

1. A bar employee or an employee shall:
 - a. Deface the letter B, I, N, G, or O of a winning bingo card when it is redeemed; and
 - b. Record the win for a redeemed winning bingo card valued in excess of two hundred dollars according to section 99-01.2-03-08. If a bingo card has two or more winning prize patterns, the requirement is based on the value of each prize pattern.
2. A bar employee or an employee may not:
 - a. Assist a player in marking a bingo card except to assist a disabled player;
 - b. Knowingly pay a prize to a player who is redeeming a bingo card that has been defaced, tampered with, or counterfeited;
 - c. Knowingly pay a prize to a player who is redeeming a bingo card when the player with the bingo card has left the gaming area of a site;
 - d. Publicly display a redeemed card; or

- e. Knowingly pay a prize for a bingo card after the allowed time limit. If a player attempts to redeem a bingo card after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the bingo card.
3. A prize may be cash or merchandise according to a prize flare.
4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
5. A bar employee and an organization shall document the number and value of redeemed winning bingo cards, by value, that are exchanged for cash. These bingo cards must be segregated by interim period.
6. A player shall use an ink dauber or a broad tip colored transparent highlighter to mark numbers. If a pencil, pen, permanent marker, or any other writing tool is used, a bar employee and an employee may not redeem the bingo card, but shall return the card to the player so the player may, if possible and within the time limitation, properly mark the numbers.
7. A bar employee or an employee shall compare the daubed or marked numbers of a redeemed bingo card to the record of called bingo numbers form and compare the validated time of a redeemed card to the time limitation. For a cash or merchandise prize of two hundred dollars or more, a bar employee and an employee shall also verify a redeemed card by using a master checkbook. For a redeemed card, a bar employee or an employee shall write the amount of the cash prize, excluding cents, or description of the merchandise prize in the prize line on the game information side of the card, and initial beside the line.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-13-05. Recordkeeping.

1. For each interim period, records must include:
 - a. The flares, test vended bingo cards, and all redeemed winning and unsold cards. An organization may not open an unsold or defective card. These records, including an unused prize flare with a state gaming stamp affixed, must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
 - b. Record of win according to section 99-01.2-03-08;
 - c. Record of called bingo numbers;
 - d. Credit redemption register;
 - e. If an employee redeems winning bingo cards at a site, a daily employee report documenting the daily starting and ending cash on hand according to section 99-01.2-03-06 and prizes redeemed;
 - f. Interim period site summary, including meter readings, deals added, currency withdrawn, redeemed prizes by denomination, cash profit, and bank deposit;
 - g. Summary, including cumulative prizes, cash profit, and bank deposits;
 - h. Inventory records according to section 99-01.2-03-09; and
 - i. Access log.
2. A summary of ideal gross proceeds, value of unsold bingo cards, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all interim periods for a quarter must reconcile to the tax return.
3. The cash profit (see subdivision d of subsection 6 of section 99-01.2-02-01) for an interim period must be deposited intact according to section 99-01.2-03-10.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

**CHAPTER 99-01.2-14
ELIGIBLE USES**

Section

99-01.2-14-01

Prohibited Transactions and Uses

99-01.2-14-02

Eligible Uses

99-01.2-14-01. Prohibited transactions and uses.

1. An organization may not accept, and a recipient or potential recipient of net proceeds may not give or offer to give, a payment, gift, service, loan, or other thing of material value, before or after net proceeds are disbursed. An organization may not disburse net proceeds to a recipient on the condition that the organization receive a payment, gift, service, loan, or other thing of material value from the recipient, or that the recipient hold a meal or other activity at the donor's facility.
2. A disbursement of net proceeds must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use. After an organization disburses net proceeds, it may not interfere with a recipient's control of the funds or attempt to own or influence the use or sale of personal or real property bought by or for a recipient of the funds.
3. Use of net proceeds for economic development or tourism programs may not directly benefit a member, employee, or board of directors' member of a donor or donee organization nor may this person have a financial interest in a funded economic development or tourism program.
4. No private athletic, social, hobby, trade, business, professional, or similar clubs or associations generally may receive net proceeds, unless the use of the funds complies with subsection 6 of North Dakota Century Code section 53-06.1-01 or section 99-01.2-14-02. Gaming expenses or capital costs associated, directly or indirectly, with gaming are not an eligible use.
5. An organization may not use net proceeds for fundraising activity that is, directly or indirectly, associated with gaming, including purchase of equipment and consumable products for a cafe at a site. If an organization uses net proceeds for fundraising activity not associated with gaming, only the net income of that activity may be applied to an imbalance of its gaming or trust fund accounts. No net proceeds may be disbursed for a fundraising activity involving a retail business.

6. The attorney general may require a recipient of net proceeds to document the use of the funds and reimburse a donor organization if the funds were used for an ineligible use.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-14-02. Eligible uses.

1. A use of net proceeds for erecting, acquiring, improving, maintaining, or repairing real or personal property owned by an organization is an eligible use provided the organization agrees that, upon abandoning the exclusive use of the property for an eligible use, it will transfer the property to a governmental unit or to an organization that will use it for an eligible use. However, if an organization sells the property, the net receipts from the sale must be deposited in the trust fund account and disbursed to an eligible use.
2. In applying subdivision a of subsection 6 of North Dakota Century Code section 53-06.1-01, net proceeds must be disbursed to or by a recognized nonprofit city or county jobs development authority (see North Dakota Century Code chapters 11-11.1 and 40-57.4) or local development corporation (see North Dakota Century Code section 10-24-40).
3. In applying subdivision b of subsection 6 of North Dakota Century Code section 53-06.1-01, net proceeds must be used to attract in-state and out-of-state visitors by publicizing attractions, promoting, planning, conducting, and sponsoring meetings, conventions, seminars, sporting events, and festivals, and by developing and promoting the state's attractions, recreational opportunities, shopping malls, and other tourism-related activities. Uses may not directly benefit a for-profit enterprise. Uses include:
 - a. Media advertising, promotional items, and printed information;
 - b. Cooperative promotions with tourism attractions and associations;
 - c. Market information systems;
 - d. Promoting the state to the film and entertainment industry and foreign markets;
 - e. Developing slides, logos, and artwork;

- f. Providing hosting fees, monetary bids, loans, advances, financial guarantees, support services, education programs, and entertainment, including food and drink;
 - g. Hosting and supporting trade shows, booths, tours, and visitor information centers; and
 - h. Pooling and matching of funds, grants, and subsidies.
4. In applying subdivision c of subsection 6 of North Dakota Century Code section 53-06.1-01, eligible uses include:
- a. A scholarship for a student. A scholarship may be based on criteria, including community service, patriotism, leadership, education, talent, athletic ability, course of study, or special handicap. No scholarship may be based primarily on a person's physical fitness. No scholarship award may be decided by a donor organization, unless the organization administers an education program for special students or students inflicted with disease. Net proceeds may be disbursed to a scholarship board or to an educational institution. A majority of the members of a scholarship board may not be members of a donor organization. A disbursement must be payable to an educational institution and a recipient, scholarship board and a recipient, or to an educational institution or scholarship board. A student receiving a scholarship may apply it at a nonprofit public, or for profit or nonprofit private educational institution registered with or accredited by any state. A scholarship may be for housing, books, tuition, and meals that relate to a student's educational need. A scholarship may be awarded through a pageant, contest, or tournament; however, associated administrative and operating expenses do not qualify. A scholarship may not be based on criteria that includes a person's physical appearance;
 - b. Supplemental assistance to a primary, secondary, or postsecondary nonprofit educational institution, including affiliated alumni associations, booster clubs, parent-teacher councils, and college sororities and fraternities. Net proceeds may be used for youth activities, educational equipment, musical instruments, playground equipment, extracurricular activities, sporting events, field trips, cultural exchanges, maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and supplies;
 - c. Assistance to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, books, computer systems, information services, exhibits, story hours, film

showings, and discussion groups. A disbursement to a museum may be for maintaining buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation;

- d. Assistance to a nonprofit performing arts and humanities organization for studio and auditorium rental, speaker fees, equipment, travel, administrative and operating expenses, and uniforms. Functions may include children's theater, summer camps, and developing art parks;
- e. Preservation of cultural heritage, including restoring, reconstructing, improving, or preserving public buildings in North Dakota which are listed in the state historic sites registry or the national registry of historic places. Net proceeds may be used for programs of nonprofit organizations that provide historical information or tell a story about a local region, North Dakota, or the nation and which primarily educate and inspire the public, elderly, handicapped, schoolchildren, teachers, and foreign visitors. Qualifying programs include the lifestyles and human experiences of homesteaders, immigrants, Indian culture, frontier army, and fur trade. Net proceeds may be used for interpretive programming including exhibits, publications, simulations of life, classroom outreach services, audiovisual presentations, special events, and tours. Special events such as chautauquas and community celebrations of Norskfest, threshing bees, and Oktoberfest qualify for expenses of parades, displays, equipment, educational materials, and awards. School reunion expenses do not qualify;
- f. Youth community and athletic activities open to all youth, less than eighteen years of age. An organization shall disburse, to the extent possible, equal amounts to activities for each gender. Net proceeds may be used for uniforms, equipment, tournament fees, private and public ground transportation, coaches' salaries, speaker fees, for father-son and mother-daughter banquets provided that the meals for these banquets are provided free or at actual cost to the participants. Business sponsored appreciation luncheons and banquets, advertising, and the purchase of a transportation vehicle do not qualify;
- g. Adult amateur athletic activities within North Dakota including softball, rodeo clubs, curling clubs, bowling teams, shooting clubs, riding clubs, and horse clubs. Net proceeds may be used for sponsorship fees, uniforms, umpire fees, use and maintenance of a sports complex, and team equipment. Uniforms and team equipment must be owned by the team or league association. Tournament fees, food

and drink, lodging, trophies, prizes, and private or public transportation expenses do not qualify, except transportation expenses for a disabled player;

- h. Maintenance of religious buildings, remodeling, fixed assets, administrative and operating expenses, uniforms for a choir, furnishings, and supplies for church groups and services; and
 - i. Scientific research for a cure to relieve human beings of disease and suffering.
5. In applying subdivision d of subsection 6 of North Dakota Century Code section 53-06.1-01, eligible uses include:
- a. Food, temporary housing, clothing, utilities, and fuel for private and public transportation for an individual or family suffering from poverty or homelessness;
 - b. Purchase and maintenance of a ground transportation vehicle for the elderly;
 - c. Services for abused persons, including to:
 - (1) Provide emotional support, guidance, and counseling to victims of crimes of rape and sexual assault and encourage prosecution of perpetrators;
 - (2) Establish educational programs about rape, sexual assault and incest, the dramatic effects it has on victims and their families, and the cost to society;
 - (3) Establish and direct services for abused spouses and their children in the community, including advocacy, emergency shelter and food, information services, referrals, and peer support; and
 - (4) Develop and coordinate programs to encourage and assist development of a strong volunteer advocate network.
 - d. Support for youth centers and halfway houses;
 - e. Recognize an individual or group of people who volunteer their time to community services, nursing homes, or hospitals if a gift, prize, or other gratuity does not exceed one hundred dollars per person per calendar year;
 - f. Net proceeds may be used for public or private nonprofit nursing homes and other nonprofit medical facilities for maintaining buildings, remodeling, fixed assets, administrative and operating services, supplies, reading programs, and craft activities for patients;

- g. Complying with Americans With Disabilities Act of 1990 by remodeling a publicly owned facility; and
 - h. To remodel or improve a fraternal or veteran's organization's owned facility or a nonprofit community facility to make it accessible or usable to youth, senior citizens, people with disabilities, and nonmembers of the organization, for community programs, services, or functions. A building must be used by the community. To make a building accessible, net proceeds may be used to widen doorways and hallways, remodel bathroom fixtures and facilities, install chair lifts, wheelchair ramps, elevators, handrails, and automatic door openers. To make a building usable, net proceeds may be used to repair a building to meet a building code or make it structurally fit for use, to enlarge a facility, replace a furnace, water heater, and air conditioner, and to make it safe. The cost must be prorated to the benefit the community receives in relation to the total usage of the facility as determined by the attorney general.
6. In applying subdivision e of subsection 6 of North Dakota Century Code section 53-06.1-01, eligible uses include promotion of cultural, educational, charitable, and welfare activities sponsored by an organization. Qualifying uses include burial expenses and flowers provided an organization does not discriminate between members and nonmembers. State and national convention expenses; recognition nights that may include a banquet, program, and dance for past commanders or past members; ceremonial and ritual activities; and purchase of a transportation vehicle do not qualify.
7. In applying subdivision f of subsection 6 of North Dakota Century Code section 53-06.1-01, eligible uses include promotion and celebration of civil rights, nondiscrimination, patriotism, and freedom. Administrative, operating, and a participant's expenses for a pageant do not qualify.
8. In applying subdivision j of subsection 6 of North Dakota Century Code section 53-06.1-01, net proceeds may be used for subsistence for a family member traveling with an ill family member to an out-of-town medical facility.
9. In applying subdivision l of subsection 6 of North Dakota Century Code section 53-06.1-01, eligible uses include:
- a. Adult and city bands, choirs, including drum and bugle corps, color and honor guards, parade floats, director fees, uniforms, sheet music, audio system, instruments, transportation vehicle, and private and public ground transportation for performances at concerts, homecomings, open houses, parades, festivals, funerals, nursing homes, hospitals, and special events. For only a color or honor

guard, net proceeds may be used to pay a member a maximum per diem of fifteen dollars for each day of actual service. An audio system and instruments must be owned by a band, choir, or organization. A transportation vehicle must be owned by an organization;

- b. Educational agricultural trade shows and conventions held in North Dakota. Meals and entertainment do not qualify;
 - c. Nonprofit organizations that protect animals. Uses include:
 - (1) Hatcheries and wildlife preserves and sanctuaries;
 - (2) Teaching and promoting ecology, game and wildlife management, and outdoor interests involving animals, fish, and birds; and
 - (3) Spay and neuter programs, pet placement, lost and found pet services, educational programs, investigations of animal abuse, and information services; and
 - d. Preserving and cleaning up the environment, including air quality, water quality, and waste programs, and conservation of natural resources.
10. In applying subdivision m of subsection 6 of North Dakota Century Code section 53-06.1-01, a special trust fund:
- a. Must be managed and controlled by trustees, who may be board members, appointed by an organization. However, if an organization dissolves, it must establish a nonprofit corporation limited to the primary purpose stated in its declaration of trust. A trust may be revocable or irrevocable; and
 - b. Must be comprised only of net proceeds which can be disbursed to the trust periodically or in a lump sum. Net proceeds must be invested only in marketable securities. A trust's principal, interest, dividends, and gains on sales of investments must be applied toward the trust's primary purpose. No trust's principal can be disbursed until a donor organization has permanently discontinued conducting games or dissolved.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

**CHAPTER 99-01.2-15
DISTRIBUTORS**

Section	
99-01.2-15-01	License
99-01.2-15-02	Restrictions and Requirements - Distributor
99-01.2-15-03	Inventory Records and Reconciliation
99-01.2-15-04	Purchase and Sales Restrictions
99-01.2-15-05	Restrictions and Requirements - Dispensing Devices
99-01.2-15-06	Marking and Identification of Gaming Equipment
99-01.2-15-07	Sales to an Indian Tribe, United States Military, Out-of-State Purchaser, or to an Organization's Site on Tribal Land
99-01.2-15-08	Promotional and Sample Bingo Cards and Pull Tabs
99-01.2-15-09	State Gaming Stamp and Return of Gaming Equipment
99-01.2-15-10	Recordkeeping

99-01.2-15-01. License. Except as provided by subsection 1 of section 99-01.2-02-08 and subsection 3 of North Dakota Century Code section 53-06.1-14, a person may not sell, lease, solicit business, or provide gaming equipment to a licensed organization, distributor, or organization that has a local permit without a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. A license must be displayed at the business office.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-15-02. Restrictions and requirements - Distributor.

1. A licensed organization, organization that has a local permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a local permit may not be an officer, director, shareholder, proprietor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not, directly or indirectly, be a lessor of a site to an organization that is an active customer of that distributor. A change in the ownership of a distributor must be immediately reported to the attorney general.
2. A distributor shall have an office in North Dakota at which records must be kept.

3. An officer, director, shareholder, agent, or employee of a distributor may not:
 - a. Directly or indirectly play a game of pull tabs, club special, tip board, coin board, seal board, or punchboard at any site or provide bookkeeping services to an organization; or
 - b. Interfere with a lessor's relationship with an organization involving a lease agreement, attempt to influence a bar to enter into a lease agreement with an organization, or procure a site for an organization. A distributor may notify an organization of an available site.
4. A distributor may not have an expressed or implied agreement with another distributor to restrict either of them to a specific geographic area or organization.
5. A distributor may not sell or provide a drop box unless it is a double-locking or triple-locking removable metal container and has:
 - a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and
 - b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width. Inside a drop box there must be a spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.
6. A distributor may not sell or provide twenty-one or paddlewheel chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.
7. A distributor may not, directly or indirectly, give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a local permit. A distributor may not, directly or indirectly, loan money (excluding credit) to a licensed organization or organization that has a local permit, or to an employee of such an organization.
8. A distributor shall, within ninety days of starting business, request orientation from the attorney general. The

orientation must include the gaming law, rules, and recordkeeping.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-15-03. Inventory records and reconciliation.

1. A distributor shall maintain a quantity-based perpetual inventory system for deals of pull tabs and bingo cards, used in a dispensing device, club specials, tip boards, coin boards, and punchboards that are bought or received from any source. A system must account for the sale or disposition of each item. The system must separately account for the quantity of items acquired, sold, and remaining in inventory by:
 - a. Name of manufacturer or other source, and purchase invoice number and date;
 - b. Name of game and manufacturer's game form number, excluding deals of jar tickets;
 - c. Distributor's sales invoice number and date.
2. A distributor shall annually reconcile its inventory of deals of pull tabs and bingo cards used in a dispensing device, club specials, coin boards, tip boards, and punchboards that are recorded as being in inventory to these items that are actually in inventory. A person shall count these items in inventory, compare this count to the inventory records, and resolve any difference. The count must be done by a person who is not primarily responsible for safeguarding the physical inventory of the items. A reconciliation must be documented, including the result, corrective action taken, name, title, initials, and date of the person who did it.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-15-04. Purchase and sales restrictions.

1. A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company must have originally bought the equipment directly from a licensed manufacturer.

2. A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.
3. A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs or bingo cards, club special, tip board, coin board, or punchboard that:
 - a. Does not conform to the quality standards of section 99-01.2-16-04, 99-01.2-16-05, or 99-01.2-16-06;
 - b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or
 - c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.
4. A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address in North Dakota.
5. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or the organization.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-15-05. Restrictions and requirements - Dispensing devices.

1. A distributor may not:
 - a. Sell or provide a device to an organization unless a model of the device has first been approved by the attorney general;
 - b. Modify an approved device model or electronic currency validator unless authorized by the attorney general; or

- c. Rent a device to an organization unless the payment of rent is for a fixed dollar rate per month or other duration.
2. The phrase "An eligible organization shall acquire all raffle tickets or gaming equipment from a licensed distributor" of subsection 3 of North Dakota Century Code section 53-06.1-14 allows a distributor to arrange for an organization to acquire a device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.
3. If a distributor is an agent for another distributor in marketing a device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to a device.
4. A distributor that sells or provides a new device to an organization or distributor, other than as an agent, shall comply with subdivisions a and b unless that distributor contracts with another distributor to comply with this rule on its behalf. However, a distributor that first sold or provided a new device to an organization or distributor shall comply with subdivision a for any organization that may later own or lease the device.
 - a. Maintain an adequate inventory of electrical and mechanical parts in North Dakota, provide a maintenance service agreement, and provide technical assistance and training in the service and repair of a device.
 - b. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.
5. A distributor that sells or provides a used device to an organization shall comply with subdivisions a and b of subsection 4 unless the distributor contracts with another distributor to comply on its behalf. However, if a distributor is merely transacting a transfer of a device, for or without a fee, between two organizations, this rule does not apply.
6. A distributor that resells, transacts a transfer, or provides a used device to an organization shall change all the keyed locks on the device.
7. A distributor of a new pull tab or bingo card dispensing device shall make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts.

8. A distributor that sells or provides a device to an organization shall record this information on a sales invoice:
 - a. Name, address, and license number of an organization and name and address of the site where the device will be placed;
 - b. Name of the manufacturer and date of manufacture which may be part of the model number; and
 - c. Name of device and its serial number.
9. A distributor shall initially set up a device at a site and conduct and document one training session on the operation and service of the device for an employee of an organization that buys a device for the first time.
10. If a distributor repairs a device, it shall complete a repair report.
11. A service technician may not access a device unless accompanied by an organization employee.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-15-06. Marking and identification of gaming equipment.

1. A manufacturer's game serial number must be on a paddlewheel ticket, pull tab, bingo card used in a dispensing device, seal board, tip board, punchboard, sports-pool board, coin board, and calcutta board. No game serial number may be special ordered. If a game serial number is not preprinted on a seal board, sports-pool board, or calcutta board, a distributor shall assign and electronically or mechanically imprint it on the board.
2. For a deal of pull tabs (two-ply card with break-open tabs), deal of bingo cards used in a dispensing device, and a specialty jar ticket game, a distributor may open a manufacturer's cellophane shrink wrap to access a flare. A distributor shall affix a state gaming stamp on the front of the original flare of a deal of pull tabs, club special, tip board, seal board, series of paddlewheel ticket cards, and on a punchboard, sports-pool board, coin board, and calcutta board that is sold or provided to a customer. If a case of bingo cards that is used in a dispensing device consists of two or more containers, each container is a separate deal, regardless of whether the game serial number is the same. A gaming stamp must be affixed in North Dakota. A distributor shall legibly write a manufacturer's game serial number in ink

on the stamp. If the written number is incorrect, the number cannot be changed or erased and the stamp must be voided. For a series of paddlewheel ticket cards, the game serial number written must be the lowest numbered paddlewheel ticket card. Then, a distributor shall replace, if applicable, a flare inside the cellophane shrink wrap and seal the opening. This rule does not apply to gaming equipment shipped directly to an Indian tribe, United States military, out-of-state purchaser, or to an organization's site on tribal land.

3. A distributor may not break a deal's permanent adhesive security seal or access the pull tabs or bingo cards inside a deal's container, except to determine a deal's game serial number, the primary color of a pull tab, or to count the pull tabs or bingo cards. If a manufacturer's security seal on a container is inadvertently broken but the integrity of a deal remains intact, a distributor may reseal the deal with a distributor permanent adhesive security seal. The seal must be applied to all accessible sides of a container and ensure that a deal's pull tabs or bingo cards are not accessible from outside the container. A distributor shall indicate on a sales invoice that the deal was resealed by the distributor and the reason.
4. A distributor shall provide a flare with a deal of pull tabs, club special, tip board, series of paddlewheel ticket cards, coin board, and punchboard. A flare, including a master flare, must indicate the name of game, manufacturer's form number (excluding a flare for a deal of jar tickets), cost per play, and value and number of winning prizes. The front of a flare for a deal of jar tickets must indicate the number of jar tickets in the deal. The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes, and winning number, symbol, or set of symbols. A symbol or set of symbols must be pictured on a flare, not described. A last sale prize must be printed on a flare or be indicated by a permanently affixed sticker. The flare or sticker must contain the last sale feature, prize value, and distributor's name or license number. This information must be mechanically or electronically printed on a flare.
5. A distributor shall provide an organization with an adequate supply of bingo prize flares for use with a bingo card dispensing device.
6. A distributor may not sell or provide a ten or twelve line or twenty-five or one hundred square sports-pool board to a customer unless a special opaque tape covers the numbers on the board. If a tape is disturbed, any recovering of the numbers must be detectable. A tape must prevent the concealed numbers from being viewed from outside when using a high intensity lamp of up to five hundred watts.

7. For a deal of jar tickets, a distributor shall provide a game information sheet containing this information or, in place of a separate sheet, the information may be printed on the front or back of the deal's flare:
 - a. Name of the game, cost per play, and number of pull tabs; and
 - b. Ideal gross proceeds, ideal prizes, by prize value, including any last sale prize, and ideal adjusted gross proceeds.
8. A distributor shall indicate this information, if known, on a club special and tip board:
 - a. Cost per play; and
 - b. Ideal prizes, by value, including any last sale prize.
9. A distributor shall print these phrases on a sports-pool board:
 - a. Professional sports pool;
 - b. Cost per play \$_____;
 - c. Ideal prizes \$_____; and
 - d. Method of prize payout _____.
10. A distributor shall indicate this information on the flare of a series of paddlewheel ticket cards:
 - a. Game serial numbers of the lowest and highest numbered paddlewheel ticket cards;
 - b. Quantity of cards; and
 - c. Type of paddlewheel ticket (for example, 40 x 3 x 120), if applicable.
11. A distributor shall print the phrase "retail value of prize \$_____" on a punchboard that has a merchandise prize.
12. A distributor shall sell a calcutta board that is cardboard or similar material on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate the information required by subsections 8, 11, and 13 of section 99-01.2-10-01. A distributor shall print "calcutta" at the top of a board and print the phrases "sporting event _____" and "method of prize payout _____" on the board.

13. A distributor shall print the phrases "cost per play \$ _____" and "retail value of prize \$ _____" on a seal board.
14. If a distributor is notified by an organization that the game serial number of a deal of pull tabs or bingo cards, club special, tip board, seal board, punchboard, series of paddlewheel ticket cards, calcutta board, coin board, or sports-pool board is different from the number written on a state gaming stamp, the distributor shall take immediate action to correct the gaming stamp and sign a correction form prescribed by the attorney general and notify the attorney general.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-15-07. Sales to an Indian tribe, United States military, out-of-state purchaser, or to an organization's site on tribal land. Gaming equipment sold or provided to an Indian tribe, United States military, out-of-state purchaser, to an organization that conducts gaming on tribal land, or to a person authorized by the attorney general must be shipped directly to the buyer or, if the equipment is not shipped directly to the buyer, a distributor shall verify that the buyer represents that customer or is from out of state. This verification must include:

1. If a person represents an Indian tribe, the United States military, or has been authorized by the attorney general, the person's name, address, and, if applicable, title or rank.
2. If a person is from out of state or represents an organization that conducts games on tribal land, the person's name and address. If a buyer is a corporation or nonprofit organization, include the federal identification number.
3. A driver's license number and state of registration recorded from a person's pictured driver's license or the person's full name and address recorded from two other forms of pictured identification.
4. Delivery information.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-15-08. Promotional and sample bingo cards and pull tabs. A distributor may not sell or provide promotional paper bingo cards, bingo cards used in a dispensing device, jar tickets, or pull tabs to an

organization or any person unless the face of each paper bingo card, the outside of a jar ticket, or the game information side of each pull tab or bingo card contains the phrase "promotional use only", "happy hour", "no purchase necessary" or similar phrase. A distributor may not sell or provide sample paper bingo cards, bingo cards used in a device, jar tickets, or pull tabs to an organization or any person unless the word "void" is on the face of each paper bingo card and jar ticket and on the game information side of each pull tab or bingo card. Also, no number, symbol, or set of symbols of any nonpromotional jar tickets or pull tabs of that manufacturer may be printed on any promotional jar tickets or pull tabs.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-15-09. State gaming stamp and return of gaming equipment.

1. A distributor shall buy state gaming stamps for twenty-five cents each from the attorney general and maintain the stamps at its North Dakota office. A distributor may not transfer or provide a stamp to another distributor. If a distributor voids or does not use a stamp, the distributor shall return it to the attorney general. There is no credit for a voided or unused gaming stamp. If a distributor discontinues business for any reason, it shall return all voided and unused state gaming stamps to the attorney general within fourteen days after discontinuance of business.
2. If an organization returns an unplayed deal, game, or series containing a state gaming stamp, a distributor shall void the stamp and complete a form prescribed by the attorney general. A distributor may not take back an unplayed deal or game containing a stamp from an organization unless the distributor originally sold it or is authorized by the attorney general. If a distributor resells or reissues a deal, game, or series, the distributor shall affix a new stamp on the flare.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-15-10. Recordkeeping. A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.
2. Sales invoices for gaming equipment, supplies, and services sold or provided. Except for a sales invoice related to a

dispensing device, the sales invoice must be prepared on a form prescribed by the attorney general and include:

- a. License number of the distributor;
 - b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;
 - c. License or local permit number of the buyer, if applicable;
 - d. Invoice number and date;
 - e. Date shipped;
 - f. Indication for a credit memo;
 - g. Quantity and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs or bingo cards, club special, coin board, tip board, seal board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets) and bingo cards, it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For paper bingo cards, it must include the quantity, primary color or type of collated booklets, serial number, size of series, and number of faces on a sheet;
 - h. Gaming stamp number;
 - i. Ideal gross proceeds, ideal adjusted gross proceeds, and value of a last sale prize, if applicable; and
 - j. An indication that a deal was resealed and the reason, if applicable.
3. A sales invoice must be:
- a. Prenumbered consecutively with a preprinted number of at least four characters;
 - b. Prepared in three parts and issued as follows:
 - (1) One part to the customer;
 - (2) One part retained in an invoice file by customer name; and

- (3) One part to the attorney general. Every invoice, including voids, must be numerically accounted for; and
- c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.
4. A sales journal must include the sales invoice date, number, total amount, and name of customer.
 5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received and amount.
 6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.
 7. Gaming stamp log on which gaming stamp and game serial numbers are recorded on a form prescribed by the attorney general.
 8. A distributor shall file a copy of each sales invoice, gaming stamp log, and record of voided gaming stamps by the fifth business day following the month of the transaction.

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01.2-16
MANUFACTURERS OF PULL TABS, PAPER BINGO CARDS,
AND PULL TAB AND BINGO CARD DISPENSING DEVICES

Section	
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99-01.2-16-01. License. A manufacturer of deals of pull tabs or bingo cards, paper bingo cards, or a pull tab dispensing device or any other person may not sell, lease, solicit business, or provide these items to a distributor without a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. The license fee is two thousand dollars. If a person manufactures pull tabs and paper bingo cards, or, pull tab dispensing devices and either pull tabs or paper bingo cards, or both, only one license fee is required.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-16-02. Background investigation and notification of complaint in another state.

1. A manufacturer, including its employees, of a pull tab or bingo card dispensing device, pull tabs, or bingo cards may not sell or otherwise provide gaming equipment to a distributor unless the manufacturer has undergone a background investigation and been approved by the attorney general. This includes each partner of a partnership, and each stockholder owning ten percent or more of the outstanding voting common stock of a corporation, including the corporation's parent or subsidiary corporation, if any.
2. A manufacturer of a pull tab or bingo card dispensing device, pull tabs, and paper bingo cards shall provide all

documentation, assurances, consents, waivers, or other information requested by the attorney general.

3. If a distributor or manufacturer received an administrative or criminal complaint or a citation from another state, it shall notify the attorney general in writing within thirty days of the date of the complaint or citation. If the complaint or citation is sustained, the attorney general may suspend or revoke a distributor's or manufacturer's license.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

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

99-01.2-16-03. Restrictions and requirements.

1. A manufacturer that sells, or provides, paper bingo cards to a distributor shall print its name or distinctive logo and the assigned serial number and series number (card number) on each card. A manufacturer shall have available for sale or provide to a distributor a master checkbook covering all card serial numbers for paper bingo cards. A manufacturer may not ship paper bingo cards directly to a licensed organization or organization that has a local permit.
2. A manufacturer may only sell or provide deals of pull tabs or bingo cards, punchboards, paper bingo cards, or a pull tab or bingo card dispensing device to a licensed distributor. A manufacturer shall maintain complete, accurate, and legible accounting records regarding all transactions on the sale of gaming equipment and retain them for three years.
3. A manufacturer may not modify the assembly or operational functions of an approved pull tab or bingo card dispensing device model unless requested by the attorney general or a written request is approved by the attorney general. However, if a modification is necessary to prevent cheating or malfunction, temporary approval may be verbally requested from the attorney general before submitting a written request. The attorney general may apply section 99-01.2-16-10 for approving a modification to a device model.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-16-04. Quality standards for pull tabs. A manufacturer shall manufacture pull tabs according to these standards:

1. Construction.

- a. A deal must be designed, constructed, glued, and assembled to prevent the determination of a winning pull tab or numbers or symbols without first removing the tabs or other covering.
- b. All the pull tabs of a deal must have the same game serial number which cannot be repeated on the same form number for three years.
- c. When a tab or other covering is removed, the numbers or symbols must be fully visible in the window and must be placed so that no part of a symbol or number remains covered. The numbers or symbols can be displaced to the left or right in a window for increased security.
- d. The window slits on a pull tab must be perforated on three sides. A pull tab must be glued on all four edges and between each window. The glue must be of sufficient strength and type to prevent the separation or delamination of a pull tab.

2. Opacity. Concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of a pull tab using a high intensity lamp of five hundred watts.

3. Color. It must not be possible to detect or pick out winning from losing pull tabs through a variation in printing graphics or colors, especially those involving different printing plates.

4. Printed information. The minimum information printed on a pull tab must be as follows, except that subdivisions b and c are not required for a folded or banded jar ticket or to a two-ply or three-ply card with only one perforated break-open tab which measures one and one-quarter inch [31.7 millimeters] by two and one-quarter inch [57.1 millimeters] or less in size:

- a. Name of manufacturer or its logo;
- b. Name of game and manufacturer's form number;
- c. Cost per pull tab;
- d. Number of winning pull tabs and winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information; and

- e. Unique minimum five-character game serial number, printed on the game information side of the pull tab.
5. **Winner protection.** A unique symbol or printed security device, such as a specific number keyed to a particular winning pull tab, or the name of the symbol or some of the symbol colors changed for a winning pull tab, or other similar protection must be placed in the winning windows of winning pull tabs. Also, a winning pull tab that has a prize greater than twenty dollars must have a secondary form of winner verification.
6. **Randomization.** The winning pull tabs must be intermixed among all other pull tabs in a deal to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning pull tab may be determined. A deal must be assembled so that no placement of winning or losing pull tabs exists that allows prize manipulation or pick out. Banded jar tickets packaged in a bag must be randomized.
7. **Guillotine cutting.** It must not be possible to isolate winning or potential winning pull tabs of a deal by variations in size or the appearance of a cut edge of the pull tabs.
8. **Packaging.**
 - a. A deal's container must be sealed with a seal that warns the purchaser (end user) that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure that a deal's pull tabs are not accessible from outside the container when sealed. A manufacturer shall seal or tape every entry point into the container. The seal or tape must be tamper resistant and be designed so that should a container be opened or tampered with, it would be easily noticed. For jar tickets packaged in a bag, the glue used to seal the flap of the bag must be permanent adhesive glue. The required seal cannot be a manufacturer's cellophane shrink wrap.
 - b. A manufacturer shall print, in bold letters, "Pull tabs must be removed from this packaging container and thoroughly mixed before sale to the public" or similar language on the outside of a container.
 - c. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.
 - d. For a deal shipped to North Dakota, a flare for a deal of pull tabs (two or three-ply card) or a specialty jar ticket deal must be located on the outside of the deal's

sealed container so that the seal will not be broken to access the flare.

9. **Number of top tier winners.** A deal must have at least two top tier winning pull tabs.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-16-05. Quality standards for punchboards. A manufacturer of punchboards shall manufacture, assemble, and package a punchboard so that winning punches, or approximate location of winning punches, cannot be determined in advance of punching the punchboard, including any patterns in manufacture, assembly, packaging, or markings. Winning punches must be randomly mixed among all other punches in a punchboard and between all other punchboards.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-16-06. Quality standards for bingo cards used in a dispensing device. A manufacturer shall manufacture deals of bingo cards used in a dispensing device according to these standards:

1. **Construction.**

- a. A case must consist of at least three thousand bingo cards with different faces and series numbers.
- b. Deals of bingo cards that have a different cost per play must be differentiated.
- c. A deal must be designed, constructed, glued, and assembled to prevent the determination of the card numbers without first removing the tab.
- d. All the cards of a deal must have the same game serial number. A serial number of a case of two or more deals cannot be repeated on the same form number for three years.
- e. A bingo card must be a two-ply card with one perforated break-open tab. The single tab slits on a card must be perforated on three sides. A card must be glued on all four edges. The glue must be of sufficient strength and type to prevent the separation or delamination of a card.
- f. When a tab is removed, the bingo numbers must be fully visible in the window and must be placed so that no part

of a number remains covered. The numbers can be displaced to the left or right in a window for increased security.

2. **Opacity.** Concealed numbers cannot be viewed or determined from the outside of a bingo card using a high intensity lamp of five hundred watts.
3. **Randomization.** Cards of a deal must be thoroughly mixed to eliminate any pattern among the deal's cards and between deals or portions of deals, based on the cards' series numbers.
4. **Printed information.**

- a. The game information side must contain the:

- (1) Name of game;
- (2) Unique minimum five character manufacturer's game serial number;
- (3) Manufacturer's form number and name of manufacturer or its distinctive logo;
- (4) Cost per bingo card;
- (5) Space for validation. See subsection 32 of section 99-01.2-16-08; and
- (6) Lines for name and address of winning player and prize amount.

- b. The tab side must contain instructions for the player to open the tab, mark the numbers posted, compare the marked numbers to the posted winning patterns, and, if a winning card, redeem for a prize.

- c. Inside the tab there must be a preprinted bingo face with twenty-five squares arranged in five vertical columns and five horizontal rows. The letters B, I, N, G, and O must be printed above the five vertical columns. The middle square may be a free space. The bingo face must indicate the manufacturer's series number for that face and the manufacturer's game serial number for that deal.

5. **Packaging.**

- a. A deal's container must be sealed with a seal that warns the purchaser (end user) that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure a deal's bingo cards are not accessible from outside the container when sealed. A manufacturer shall seal or tape every entry point into the container. The seal or tape must be tamper resistant and

of such construction to guarantee that should a container be opened or tampered with, it would be easily noticed. The required seal cannot be a manufacturer's cellophane shrink wrap.

- b. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.
 - c. The prize flare for a deal must be located on the outside of the deal's sealed container so that the seal will not be broken to access the prize flare.
6. **Prize flare.** A prize flare must accompany each deal and contain:
- a. Separate lines for name of organization, name of site, control number, and device number;
 - b. Cost per bingo card;
 - c. Lines for time and date when the prize flare is placed in play and removed from play. The lines must be designated by the hour, minute, and a.m. or p.m.;
 - d. Lines for two initials for when the prize flare is placed in play and for one employee's initials for when the prize flare is removed from play;
 - e. Three lines for listing a winning pattern or patterns, as ways to win;
 - f. Three lines for listing a prize amount, corresponding to a winning pattern or patterns;
 - g. Examples of various patterns that may be selected for a winning pattern. Each example must specify the name of the pattern and whether it is an "any way" pattern;
 - h. At least two blank bingo cards with twenty-five squares arranged in five vertical columns and five horizontal rows. The letters B, I, N, G, and O must be printed above the five vertical columns. The blank cards may be completed by an organization for illustrating a winning pattern or patterns that are not shown as an example; and
 - i. The phrase "except for an 'any way' pattern, a winning pattern is based on a bingo card being in an upright position".

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-16-07. Ban or recall of defective pull tabs or bingo cards.

1. If the attorney general determines that deals of pull tabs, bingo cards, or punchboards for sale in North Dakota do not meet the quality standards, the attorney general may order all defective deals and all similarly constructed or printed deals in North Dakota to be immediately recalled by the manufacturer or banned, or prohibit a manufacturer from transacting business in North Dakota. If the attorney general orders such a ban or recall, the manufacturer of the deal must first be notified of the reason, effective date, and any specific requirements. Upon notification, a manufacturer shall cease sale of that deal and initiate compliance with a ban or recall. A manufacturer shall notify, in writing, all distributors within seventy-two hours of the notice, the effective date, and arrange for the prompt return of all the defective deals.
2. A distributor, when notified by a manufacturer or attorney general, shall immediately stop sales or delivery of the deals. Within seventy-two hours, a distributor shall notify the organizations that have bought the deal during the last ninety days, the effective date, and arrange for the prompt return of all the defective deals.
3. Before any reintroduction in North Dakota of a banned or recalled deal, a manufacturer shall first submit the revised deal to the attorney general for approval. The attorney general shall notify the manufacturer of the approval or disapproval and a copy of an approving letter must be sent by the manufacturer to the distributor with the next shipment of the revised deal.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-16-08. Manufacturing specifications - Dispensing device.

A pull tab and a bingo card dispensing device must meet these specifications:

1. If a device is designed to accommodate two or more different games of pull tabs, each compartment must independently meet the specifications of this section;
2. Electrical and mechanical components and design principles may not subject a person to any physical hazard or cause electrical interference. The power cord must be ten feet [3.05 meters] in length and have a three-prong ground at the male end. A surge protector or in-line power filter must be installed in-line on the main powerline to a device. A device

- must safely and operatively withstand a static test of twenty thousand volts of electricity;
3. A bingo card device must have an on and off keyed switch located in front of the device to control the electrical current or electronic currency validator;
 4. A pull tab device must have at least four columns for stacking pull tabs and have capacity for two thousand four hundred pull tabs. A bingo card device must have at least two columns for stacking bingo cards and have capacity for two thousand two hundred cards. A stacking column for bingo daubers is optional;
 5. A stacking column must be adjustable for varying lengths of pull tabs. However, as an option, a device may use replaceable stacking columns that accommodate varying lengths of pull tabs. The device must accommodate a minimum pull tab size of one and seven-eighths inches [47.6 millimeters] in width by two and five-eighths inches [64.77 millimeters] in length, a maximum pull tab size of one and seven-eighths inches [47.6 millimeters] in width by four and one-fourth inches [107.95 millimeters] in length, or both sizes;
 6. A device must be adjustable for varying thicknesses of pull tabs or bingo cards;
 7. Glass must be placed in front of the columns and be sufficiently clear to enable an employee to see whether a device is low on pull tabs or bingo cards;
 8. A device must have a dispensing outlet or tray to catch a dispensed pull tab or bingo card;
 9. A device must have one currency validator. A coin validator is not allowed;
 10. A pull tab device must accommodate pricing of twenty-five cents, fifty cents, one dollar, and two dollars per pull tab and dispense the correct number of pull tabs based on the amount of credit played. The standard price per pull tab must apply to all columns;
 11. A bingo card device must accommodate pricing of twenty-five cents, fifty cents, one dollar, two dollars, and five dollars. The price at which each column is set may differ for dispensing differently priced cards and daubers. A device must dispense the correct number of bingo cards and daubers based on the amount of credit played;
 12. An exterior door must have at least one keyed lock. The key must be different from all other keys used on other devices manufactured by the manufacturer;

13. A pull tab device may have an optional "all" player button that activates the device to dispense pull tabs at one time, equal to the value of the unplayed credits and randomly from the columns selected by a random number generator or player button sequencing concept;
14. A bingo card device may have an optional "all" player button that activates the device to dispense up to twenty-five bingo cards at one time from the column selected by a player. However, an "all" player button cannot apply to a bingo dauber column;
15. A device must have an interior mode switch, interior dipswitch, or an exterior mode switch activated by a key which enables a person to:
 - a. Set the price per pull tab, bingo card, or dauber; and
 - b. Unless a device prints reports prescribed by subsection 18, access the accounting information required by subsection 16 and, if the device has nonresettable electronic accounting meters, subsection 17;
16. Unless a device prints report prescribed by subsection 18, there must be at least two independent resettable electronic accounting meters. The meters must maintain accounting information of at least four digits in length and be capable of maintaining the accounting information for six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:
 - a. Total value of currency validated; and
 - b. Total number of pull tabs or bingo cards dispensed;
17. Unless a pull tab or bingo card device prints reports prescribed by subsection 18, there must be at least two independent nonresettable electronic or mechanical accounting meters. The meters must maintain accounting information of at least six digits in length and be capable of maintaining the accounting information for six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:
 - a. Cumulative value of currency validated; and
 - b. Cumulative number of pull tabs or bingo cards dispensed;
18. Unless a device has resettable and nonresettable accounting meters prescribed by subsections 16 and 17, the device must print a cash pickup and a lifetime activity report.

- a. A cash pickup and a lifetime activity report must:
 - (1) Be printed and accessible only from the interior of a device;
 - (2) State the time and date of the present report and of the preceding report. The time must be expressed in numeric hours and minutes. The hour must be expressed as a.m. or p.m.;
 - (3) State the unique device number; and
 - (4) State a sequential report number, which must be at least three digits in length, starting with number one.
- b. A cash pickup report, based on resettable electronic accounting meters, must include this information for activity since the preceding report:
 - (1) For a pull tab device, number and value of pull tabs dispensed from all columns;
 - (2) For a bingo card device, number and value of bingo cards and daubers dispensed from each column and from all columns; and
 - (3) Value of currency validated.
- c. A lifetime activity report, based on nonresettable electronic accounting meters, must include this information for activity since a device was manufactured:
 - (1) For a pull tab device, cumulative number and value of pull tabs dispensed from all columns;
 - (2) For a bingo card device, number and value of bingo cards and daubers dispensed from each column and from all columns; and
 - (3) Cumulative value of currency validated;
19. To ensure a commingling of pull tabs, a random number generator or player button sequencing concept must be used to select a particular column from which a pull tab will be dispensed. A selection process is random if it does not produce a significant statistic of recurring patterns. A player button sequencing concept must field each button at least one hundred times a second;
20. Instructions for player operation must be permanently affixed or placed under glass or other transparent material on the front of a device;

21. A pull tab device must have one or more player buttons located on the front of it which activate the dispensing of a pull tab. However, excluding an "all" player button, the number of player buttons may not exceed the number of columns. Regardless of which player button is pressed, the selection of a particular column from which a pull tab is dispensed must be done by a random number generator or player button sequencing concept;
22. A bingo card device must have a separate button located on the front of it for each column of bingo cards and for the bingo dauber column which activates the dispensing of a card or dauber from that column;
23. A device must have an LED or LCD display screen of at least four digits in length. However, if a device uses two independent nonresettable electronic accounting meters, the device must have an LED or LCD display screen of at least six digits in length. The digits must be one-half of one inch [12.70 millimeters] in height. The value of currency validated must be displayed on the LED or LCD screen as a monetary credit which is drawn down as a device vends a pull tab, bingo card, or dauber. Unless a device prints reports prescribed by subsection 18, the LED or LCD display screen must also display the accounting information required by subsection 16 and pricing information required by subdivision a of subsection 15;
24. A device must record every vend of a pull tab, bingo card, and dauber and every currency validation, including a test vend of a pull tab, bingo card, or dauber and a test validation of currency, on the accounting meters required by subsections 16 and 17 or subsection 18;
25. If a device malfunction occurs or electrical power is interrupted, the value of credits previously displayed on an LED or LCD display screen must be correctly redisplayed immediately after the malfunction is cleared or electrical power is restored. However, this rule does not apply if a device is totally inoperable;
26. In a pull tab device a column of pull tabs must automatically discontinue operation, triggered by an electronic microswitch or optical switch, when the column has fewer than fifty pull tabs remaining. However, this rule does not apply when an organization is closing a game at which time a microswitch or optical switch may be circumvented;
27. A device must automatically stop operating when there is only one column of pull tabs remaining in order when the other columns of pull tabs are out of order due to a low level of pull tabs remaining in one or more stacking columns or due to jams. However, if this occurs and there are unplayed credits

on the device, the device may dispense pull tabs equal to the value of the unplayed credits from the remaining column before the device automatically stops operating. A device must automatically stop operating when all the columns of bingo cards are out of order;

28. An identification plate must be affixed at the top of an exterior side panel and contain the device's:
 - a. Manufacturer;
 - b. Serial and model numbers; and
 - c. Date of manufacture which may be part of the model number;
29. No device may have an auxiliary remote control unit for posting credits;
30. A device must automatically stop operating when a nonresettable meter is disconnected;
31. A device must have a maintenance and operations manual;
32. A bingo card device must validate a dispensed bingo card by printing this information in a prescribed area on the card. The validation must be clearly printed in permanent purple or black ink and be electronically printed at least three-sixteens of one inch [4.76 millimeters] in height:
 - a. Unique machine number or validation control code of at least four characters in length;
 - b. Month and day. The month may be expressed alphabetically and may be abbreviated to three characters or it may be expressed in numeric digits. The day must be expressed in numeric digits; and
 - c. Time expressed in numeric hours and minutes. The hour must be designated as a.m. or p.m. Military time is not allowed;
33. A bingo card device's internal clock must be programmed to automatically adjust the time to change to and from daylight savings time. A device must maintain the proper time for six months after electrical power to the device is turned off; and
34. A bingo card device must have an electronic LED flashboard for posting bingo numbers which, when lit, must be readable from a distance of ten feet [3.05 meters].

History: Effective August 1, 1996.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

99-01.2-16-09. Standards for a currency validator - Dispensing device. A currency validator must:

1. Validate only United States currency and only values of one, two, five, ten, and twenty dollar bills;
2. Have an antipullback mechanism and other anticheat devices that prevent cheating of the bill acceptor by mechanical means;
3. Reject invalid and all known manipulations of United States currency;
4. Have a currency stacker box or drop box; and
5. If a malfunction occurs, automatically discontinue accepting or validating currency.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-16-10. Testing and approval - Dispensing device.

1. A manufacturer of a pull tab or bingo card dispensing device may not sell or provide a device to a distributor unless a model of the device has been approved by the attorney general.
2. A manufacturer of a device shall provide a device model, a copy of its construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a currency validator shall provide a copy of the source and object code computer programs and other information requested by the attorney general. A manufacturer may provide a copy of letters of approval and test reports of the device or currency validator from other states, federal jurisdictions, or independent testing laboratories.
3. The attorney general may require a manufacturer of a device or currency validator to transport a working model, and the information required by subsection 2 to the attorney general or designee for analysis, testing, and evaluation. A manufacturer shall pay all the costs and provide special equipment for testing a device. The attorney general may require a manufacturer to pay the estimated costs, in advance. After the analysis, testing, and evaluation is done the designee shall provide the results to the attorney general. An overpayment of costs must be refunded to a manufacturer or

the manufacturer shall pay any underpayment of costs. The attorney general shall provide the manufacturer with the results. Before approving a device's model, the attorney general may require a trial period.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01.2-16-11. Sales invoice. A manufacturer may not sell or provide to or accept from a distributor deals of pull tabs or bingo cards, punchboards, or paper bingo cards without recording the transaction on a sales or credit invoice. Except for paper bingo cards and pull tab and bingo card dispensing devices, the invoice must include the:

1. License number, business name, and address of the distributor;
2. Business name and address to which the gaming equipment is shipped;
3. Invoice number and date;
4. Date shipped;
5. Indication for a credit invoice;
6. Quantity of deals of pull tabs and bingo cards, and punchboards; and
7. Description of each deal of pull tabs and bingo cards, and punchboards sold, including the name of game and game serial number which may be listed on an addendum to a sales invoice. For a deal of pull tabs and bingo cards involving two-ply or three-ply cards with perforated break-open tabs, the description must include the manufacturer's form number.

History: Effective August 1, 1996.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

TITLE 104

Hearing Instrument Dispensers, North Dakota Board of

JULY 1996

STAFF COMMENT: Newly created title 104 contains all new material and is not underscored so as to improve readability.

ARTICLE 104-01

GENERAL ADMINISTRATION

Chapter
104-01-01 Organization of the Board

**CHAPTER 104-01-01
ORGANIZATION OF THE BOARD**

Section
104-01-01-01 Organization of the Board

104-01-01-01. Organization of the board.

1. **History.** The 1969 legislative assembly passed legislation establishing the state board of hearing aid dealers and fitters, codified as North Dakota Century Code chapter 43-33. The 1991 legislative assembly changed the name of the board to the state board of hearing instrument dispensers. The board is responsible for examining and licensing applicants for licensure as hearing instrument dispensers, and regulating the practice of fitting and dispensing hearing instruments.

2. **Board membership.** The board consists of ten members appointed by the governor. Board members must be residents of the state. The board consists of four hearing instrument dispensers who are not audiologists or otolaryngologists, one otolaryngologist, three audiologists, and two consumers. Board members serve four-year terms, and no member may be reappointed to the board until at least one year after the expiration of that person's second term of office.
3. **Board officers.** Board members annually designate individual members to serve as chairperson, licensure secretary, and treasurer.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

North Dakota Board of Hearing Instrument Dispensers
c/o 825 SW 25th Street
Fargo, ND 58103

History: Effective July 1, 1996.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

ARTICLE 104-02
MISCELLANEOUS PROVISIONS

Chapter	
104-02-01	Definitions
104-02-02	Board Officers

CHAPTER 104-02-01
DEFINITIONS

Section	
104-02-01-01	Definitions

104-02-01-01. Definitions.

1. "Adequate proper testing" as used in North Dakota Century Code section 44-33-12 includes a minimum of air conduction, bone conduction pure tone thresholds, and speech audiometry with appropriate masking. When indicated, these measures should be supplemented with sound field measures, real ear evaluations, or other board-approved methods of verification of improvement in hearing or discrimination.
2. "Direct supervision" as used in subsection 2 of North Dakota Century Code section 43-33-08 means to coordinate, direct, and inspect at first hand the accomplishments of. Direct supervision requires direct onsite supervision in the same facility or location.
3. "Hearing instrument" refers to new hearing instruments and includes the serial number provided at the time of delivery, the length of warranty on the hearing instrument, and whether the warranty is backed by the dealer or manufacturer. The term "hearing instrument" also refers to stock hearing instrument, custom shells, earmolds, used or repaired hearing instruments, and includes the serial number provided at the time of delivery, the length of warranty on the hearing instrument, and whether the warranty is backed by the dealer, manufacturer, or repair shop. In addition, all used or reconditioned instruments must be clearly marked as such.
4. "Measuring of hearing" as used in North Dakota Century Code section 43-33-04 includes that such measure should be conducted in an environment which takes into account

background noise levels and their effect upon the acquisition of valid threshold measurements. Testing should not be conducted in an environment which would render thresholds invalid.

5. "Measuring of human hearing" as used in North Dakota Century Code section 43-33-04 includes the measurement of human hearing through the utilization of an audiometer and those procedures common to otological and audiological assessment of hearing acuity.
6. "Sale" as used in North Dakota Century Code chapter 43-33 must be deemed made or completed when a purchase agreement of receipt is signed by the purchaser, total or partial payment is made, and the hearing instruments are ordered.
7. "Week" means a period of forty hours.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-01

**CHAPTER 104-02-02
BOARD OFFICERS**

Section	
104-02-02-01	Terms and Duties of Officers
104-02-02-02	Filling Vacancies
104-02-02-03	Licensure Certificates and Identification Cards

104-02-02-01. Terms and duties of officers. Officers elected by the board shall serve for a term of one year, or until a successor is elected and qualified. It is the duty of the chairperson to preside at all board meetings. It is the duty of the licensure secretary to document all board business. It is the duty of the treasurer to manage and document all board financial business. In the absence of the chairperson, a vice chairperson must be appointed to preside at the meeting by general election.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-15

104-02-02-02. Filling vacancies. In the event of a vacancy, the unexpired terms of office for chairperson, secretary, and treasurer must be filled for the remainder of the unexpired term by general election by the board.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-15

104-02-02-03. Licensure certificates and identification cards. Licensure certificates and identification cards are issued by the licensure secretary appointed by the chairperson to all licensees and permittees and must be in possession of the licensees and permittees at all times they are involved in the practice of fitting and dispensing hearing instruments.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-08

ARTICLE 104-03

LICENSURE

Chapter	
104-03-01	Examinations
104-03-02	Disciplinary Action

CHAPTER 104-03-01 EXAMINATIONS

Section	
104-03-01-01	Mailing Notice of Practicum Examination
104-03-01-02	Persons Eligible to Take Examination
104-03-01-03	Ethics on Examination
104-03-01-04	Written Submission of Complaints
104-03-01-05	Requirements for Licensure

104-03-01-01. Mailing notice of practicum examination. Notice of all practicum examinations must be sent to all persons holding temporary training permits at least forty-five days prior to the administration of the examination. To be eligible to participate in the examination, all applications for the examination must be received by the board at least thirty days prior to the examination date.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-07, 43-33-14

104-03-01-02. Persons eligible to take examination.

1. An individual may take the examination without first obtaining a temporary training permit.
2. To be eligible to take the examination, trainees under supervision are required to submit to the licensure secretary written verification of satisfactory completion of initial training requirements as outlined in North Dakota Century Code section 43-33-08.
3. An individual may take each section of the examination three times. After failing the examination the third time, the individual must wait at least one year before being eligible to take another examination.
4. A trainee under supervision is required to submit to the licensure secretary a log verifying that adequate supervision

has been given as outlined in North Dakota Century Code section 43-33-08.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-07, 43-33-08

104-03-01-03. Ethics on examination. Passing on information regarding the examination content or procedures utilized, other than complaints presented to the board, is a breach of professional ethics.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-12, 43-33-14

104-03-01-04. Written submission of complaints. Each individual taking the examination must be informed that the individual has the right to submit in writing any complaint the individual may feel justifiable as a result of participating in the examination process, but the complaint must be filed with the board within ten days of the examination. The board's decision as to appropriate action is final in regard to board consideration. If a complaint involved one of the members of the board, that member must be excused from the deliberation.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-12

104-03-01-05. Requirements for licensure.

1. Applicants may obtain a license by successfully passing a qualifying examination, provided the applicant is eighteen years of age or older, of good moral character, and has an education equivalent to a four-year course in an accredited high school.
2. The examination must include:
 - a. Tests of knowledge in the following areas as they pertain to the fitting of hearing instruments:
 - (1) Basic physics of sound.
 - (2) The anatomy and physiology of the ear.
 - (3) The function of hearing instruments.
 - (4) Hearing instrument evaluating and fitting process.
 - (5) Elementary audiology.

- b. Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:
 - (1) Pure-tone audiometry, including air conduction testing and bone conduction testing.
 - (2) Live voice or recorded voice speech audiometry, including speech reception threshold testing and most comfortable loudness measurements and measurements of tolerance thresholds.
 - (3) Masking when indicated.
 - (4) Recording, evaluation, and interpreting audiograms and speech audiometry to determine proper selection and adaption of a hearing instrument for air, bone, and speech audiometry.
 - (5) Otoscopic examination of the ear and taking earmold impressions.
 - (6) Selection and adaption of hearing instruments.
 - (7) Knowledge of calibration of equipment.
 - (8) Knowledge of North Dakota Century Code chapter 43-33 and the rules adopted by the board.
- 3. A minimum score of seventy percent is required on the written examination and seventy-five percent on the practicum examination. If a lower score is received on either examination, the applicant must be required to retake that examination.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-06, 43-33-07

**CHAPTER 104-03-02
DISCIPLINARY ACTION**

Section
104-03-02-01 Disciplinary Grounds

104-03-02-01. Disciplinary grounds. The board may refuse to renew, suspend, revoke, or place on probationary status any license or trainee permit issued by the board if the licensee or permitholder has done any of the following:

1. Made any false statement or given any false information in connection with an application for a license or trainee permit or for renewal or reinstatement of a license or trainee permit.
2. Been issued a license or trainee permit through error.
3. Practiced as a hearing instrument dealer or fitter while the person's ability to practice was impaired by alcohol or other drugs.
4. Permitted another person to use his or her license or trainee permit.
5. Failed to properly supervise trainees.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-12, 43-33-13, 43-33-14

ARTICLE 104-04
SUPERVISION AND TRAINING

Chapter
104-04-01 Supervision and Training

CHAPTER 104-04-01
SUPERVISION AND TRAINING

Section
104-04-01-01 Supervision of Trainees
104-04-01-02 Training Requirements
104-04-01-03 Responsibility of Supervisor
104-04-01-04 Forms to be Used

104-04-01-01. Supervision of trainees.

1. Supervisors of trainees must be competent professional workers who hold a valid North Dakota hearing aid dealers license. The supervision of the trainees must entail the personal direct involvement of the supervisor in a way that will permit the supervisor to attest to the adequacy of the trainee's performance in the training experience.
2. Knowledge of the trainee's work may be obtained in a variety of ways, such as conferences, audio and videotape recordings, written reports, staffings, discussions with other persons who have participated in the training of the trainee, and must include direct observation of the trainee performing pure-tone air and bone conduction and speech audiometric evaluations, interpretation of audiograms, troubleshooting hearing instruments and sound-field testing of subjects, as well as taking case history information and performing such other activities considered important to the preparation for licensure.
3. A supervisor may have a maximum of three trainees concurrently.
4. All professional contacts between the supervisor and trainee must be entered in the trainee logbook. The trainee may not make any sale of a hearing instrument without first consulting with the supervisor and obtaining the supervisor's approval and signature of such approval in the supervisor's logbook prior to such sale.

5. A person who holds a temporary training permit is required to be under direct supervision until having passed one of the two exams of the licensing process. If the trainee has not successfully passed both examinations of the licensing process within the first year, a temporary training permit may be renewed or reissued once upon payment of the required fees. At this time the trainee is required to be under direct supervision of the trainee's supervisor until such time as both parts of the examination have been successfully passed.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-07, 43-33-08

104-04-01-02. Training requirements. Training requirements are as set forth in North Dakota Century Code section 43-33-08. In addition, the board also strongly recommends completion of the basic home study course by the national institute of hearing instruments studies or its equivalent.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-08

104-04-01-03. Responsibility of supervisor. A trainee supervisor is responsible to:

1. Provide the day-to-day supervision of the trainee, including assigning a licensed supervisor for temporary absences.
2. Provide the trainee with materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting procedures.
3. Supplement the trainee's background information through reading lists and other references.
4. Conduct inservice training for trainees.
5. Act as consultant to the trainee, that is:
 - a. Provide time for conferences for the trainee.
 - b. Be able to provide a variety of resource materials, approaches, and techniques which are based on sound theory, successful practice, or documented research.
6. Establish goals with the trainee which are realistic, easily understandable, and directed toward the successful completion of trainee requirements; and:

- a. Observe the trainee in all aspects of the hearing instrument fitting process.
 - b. Confer with the trainee following trainee's contact with client.
 - c. Provide opportunity for the trainee to give feedback on the trainee's practicum experiences both during and after the practicum experience, either in writing or through conferences.
7. Assist and encourage the trainee to utilize supportive professional sources.
 8. Be aware of and adhere to state and federal laws relating to hearing instrument fitting and dispensing.
 9. Be aware of and assist the trainee in fulfilling licensing requirements of the state of North Dakota.
 10. Notify the board within ten days following termination of trainee supervision.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-08

104-04-01-04. Forms to be used.

1. The board hereby adopts the following forms:
 - a. State board practicum examination score sheets (see appendix C of guidelines for evaluating candidates for the practical test of proficiency).
 - b. Trainee log.
 - c. Supervisor's log.
2. Copies of these forms may be obtained by contacting the board licensure secretary.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-14

ARTICLE 104-05
CONTINUING EDUCATION

Chapter
104-05-01 General Requirements for Continuing Education

CHAPTER 104-05-01
GENERAL REQUIREMENTS FOR CONTINUING EDUCATION

Section
104-05-01-01 General Requirements for Continuing Education

104-05-01-01. General requirements for continuing education.

1. Each dispenser licensed in this state is required to take ten hours of continuing education each year. Subject matter for continuing education credit courses must include a minimum of six hours hearing instrument related, two hours may be audiology, and two hours of other subjects related to the hearing instrument dispensing operation.
2. Licensees shall provide written proof of attendance and completion of approved courses for renewal of license. The board may accept for continuing education credit courses approved and sponsored by the international hearing society, national institute of hearing instruments studies, and American speech-language hearing association.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-11

ARTICLE 104-06
PRACTICE REQUIREMENTS

Chapter
104-06-01 Practice Requirements

CHAPTER 104-06-01
PRACTICE REQUIREMENTS

Section
104-06-01-01 Notification of Business Name or Address Change
104-06-01-02 Guidelines for a Thirty-Day Trial Period
104-06-01-03 Advertisements

104-06-01-01. Notification of business name or address change.
Licensees are required to notify the board within ten days of when they change the name or address of their business, including notification of the forwarding address when leaving the state. The business address of licensees must be a permanent address and not a post-office box.

History: Effective July 1, 1996.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-10

104-06-01-02. Guidelines for a thirty-day trial period.

1. Any purchaser of a hearing instrument or instruments is entitled to a refund of the full purchase price advanced by the purchaser for such instrument or instruments, less a nominal usage charge as hereinafter described, upon the return by the purchaser to the licensee in good working order, normal wear and tear excepted, within thirty days from the date of delivery of such instrument or instruments.
2. Prior to delivery to the purchaser by the licensee of any instrument or instruments, the per day usage charge to which the licensee may be entitled upon the return of such instrument or instruments within the thirty-day period shall be fixed by written agreement. In the absence of such agreement, the licensee is entitled to no more than two dollars per day per instrument for each day the instrument or instruments may be held by the purchaser.
3. The purchaser is entitled, at no cost, to receive a copy of any written agreement as described in subsection 2, which

agreement must include the name, address, and phone number of the dealer or fitter.

4. No refund is due the purchaser for charges attributable to earmolds, batteries, hearing tests, or hearing evaluations and other related procedures such as special modifications such as needed for Cros or Bi-Cros hearing instruments, or any other type of fittings and testing unless such fees exceed fifteen percent of all expenses incurred in the fitting process. Upon request, any fee by the dispenser over the fifteen percent must be returned to the purchaser of the complained of instrument.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-14

104-06-01-03. Advertisements. All advertisements for testing, dispersing, or selling hearing instruments must include at least the name of the dispenser present or the office address and phone number of that dispenser.

History: Effective July 1, 1996.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-12, 43-33-14

