

**NORTH DAKOTA ADMINISTRATIVE CODE**

Supplements 249 through 251

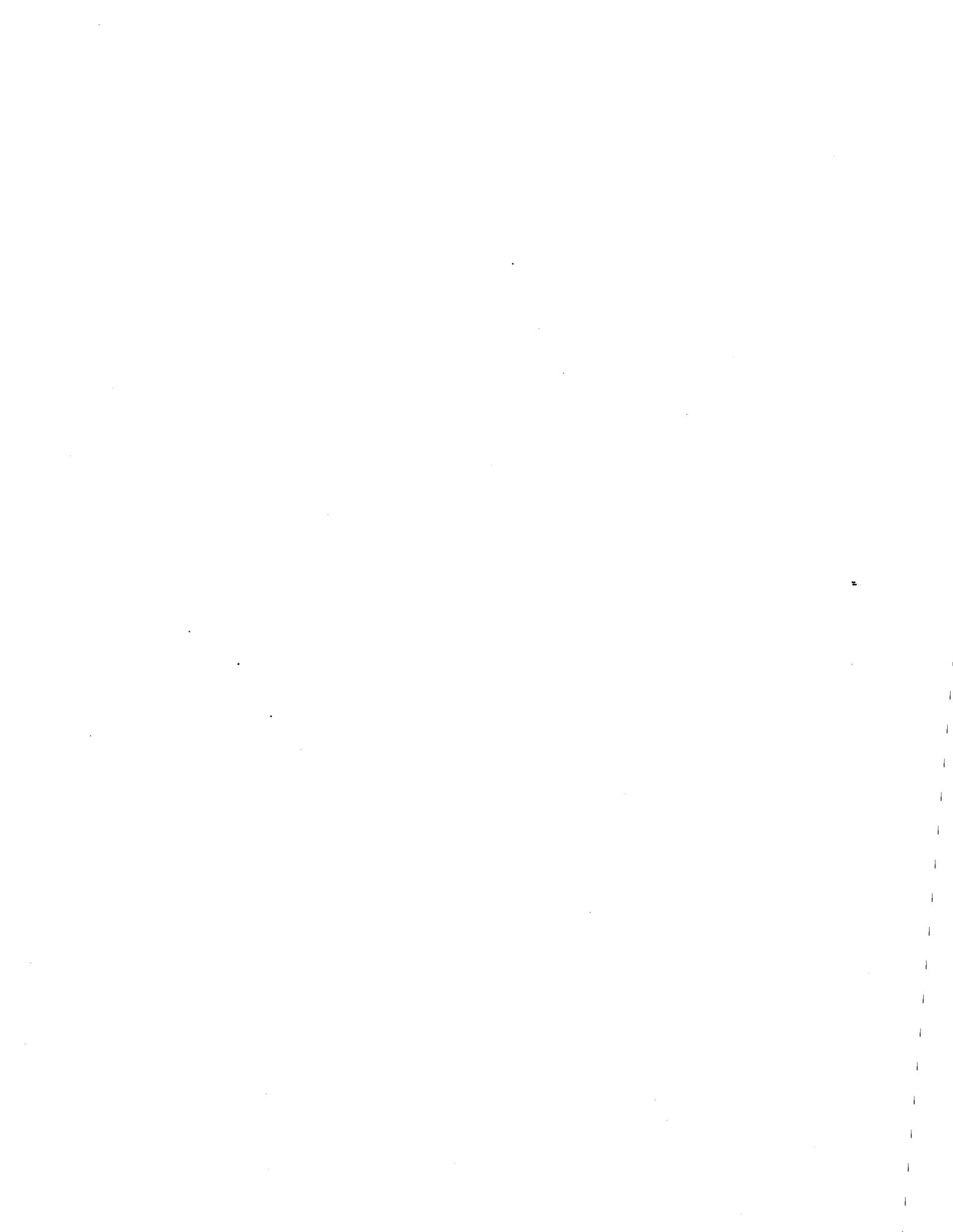
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Administrative Rules Committee**



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**TITLE 4**  
**Management and Budget, Office of**



MAY 2000

**STAFF COMMENT:** Article 4-11 contains all new material and is not underscored so as to improve readability.

**ARTICLE 4-11**

**RISK MANAGEMENT**

Chapter  
4-11-01

Risk Management Motor Vehicle Accident Review Board

**CHAPTER 4-11-01**

**RISK MANAGEMENT MOTOR VEHICLE ACCIDENT REVIEW BOARD**

Section

4-11-01-01  
4-11-01-02  
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4-11-01-05

Definitions  
Purpose  
Composition and Responsibilities  
Operating Procedures  
Board Designation as Loss Control Committee

**4-11-01-01. Definitions.** For purposes of this chapter:

1. "Accident" means an unintended event involving a state-owned or state-leased vehicle which produces injury or damage. The word "injury" includes personal injury, death, or property damage.

2. "Board" means the risk management motor vehicle accident review board.
3. "Corrective actions" means board-recommended corrective actions when an accident is classified as preventable. Recommendations may include:
  - a. Additional training be provided to the operator, such as driver training, defensive driving training, or emergency vehicle operational training;
  - b. Physical, eye, written, or operational examinations be given to the operator to identify problem areas relevant to the operator if a review of the accident indicates that the cause may have been due to an impairment;
  - c. Restricted operation of state-owned or state-leased vehicles on state business; and
  - d. Duty assignment not requiring operation of a vehicle on state business.
4. "Defensive driving concept" means driving that saves lives, time, and money in spite of the conditions and the actions of others.
5. "Nonpreventable accident" means the operator acted reasonably to prevent the occurrence.
6. "Operator" means a state employee driving a state-owned or state-leased vehicle involved in an accident. "State employee" means every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
7. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
8. "Preventable accident" means the operator did not act reasonably to prevent the occurrence.
9. "Property damage" includes injury to or destruction of tangible or intangible property.
10. "Reportable state fleet vehicle accident" means any accident that results in injury due to the operation of a state-owned or state-leased licensed motor vehicle.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

**4-11-01-02. Purpose.** The 1999 North Dakota legislative assembly established the board to review certain reportable state-owned or state-leased vehicle accidents to improve traffic safety and driver training and to reduce the number of traffic accidents.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

**4-11-01-03. Composition and responsibilities.**

1. Composition:

- a. The board consists of five voting members. Of those five members, three are ex officio permanent members and two are members who serve two-year terms.
- b. The three ex officio permanent board members are:
  - (1) The director of the department of transportation or the director's designee, who is chairperson.
  - (2) The director of the office of management and budget or the director's designee.
  - (3) The superintendent of the highway patrol or the superintendent's designee.
- c. The two nonpermanent board members are at-large designees selected by the three ex officio permanent board members. Criteria for selection of the nonpermanent board members include the total number of miles a potential nonpermanent board member's agency's personnel operate state-owned or state-leased fleet vehicles and that agency's accident rates.

2. Responsibilities of the board include:

- a. Reviewing accidents involving a state-owned or state-leased vehicle operated by a state employee.
- b. Adopting rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations.
- c. An impartial review of the facts and application of the board's rules.

- d. Taking a fair and objective vote on each matter before the board.
3. Responsibilities of the chairperson of the board include:
    - a. Scheduling the board's meetings and notifying all participants. This includes notifying the operator and the operator's agency head of the date, time, and place the board will convene to review the accident involving the operator.
    - b. Directing all activities of the board and being responsible for receiving, preparing, presenting, and maintaining all of the records, reports, and other materials pertaining to the operation of the board.
    - c. Providing the operator and the operator's agency head with the board's written decision and recommendation of corrective action.
  4. The department of transportation fleet services division will review all reportable state fleet motor vehicle accidents and report accidents of agencies not exempt from review by the board to the board if either or both of the following apply:
    - a. A preliminary review shows that the accident appears to have been preventable, using the definition of preventable accident under section 4-11-01-01.
    - b. A citation was issued to the operator of the state-owned or state-leased vehicle.
  5. The department of transportation fleet services division will use forms approved by the board to provide information pertaining to the reportable state fleet motor vehicle accident subject to the board's review. Information contained on those forms must include a description of the accident, possible underlying causes of the accident, any immediate corrective action taken to prevent reoccurrence, suggested measures to prevent reoccurrence, and whether the operator has indicated that the operator will present written evidence concerning the accident.
  6. The board will develop a form to record its decision. The form may be incorporated as a part of the form used by the department of transportation fleet services division to report an accident to be reviewed by the board. Information contained on the decision recording form must include the names of the board members reviewing the matter, a determination of whether the accident was preventable by the operator, the reasons the accident was determined preventable, the date of the decision, and the recommendation to be made to the operator's agency head.

History: Effective May 1, 2000.  
General Authority: NDCC 28-32-02, 32-12.2-14  
Law Implemented: NDCC 32-12.2-14

**4-11-01-04. Operating procedures.**

1. The board will meet on a quarterly basis, or at the call of the chairperson according to need.
2. No meeting will be convened unless three board members are present. An affirmative vote of at least three board members is required for board action or recommendation.
3. The board will afford the operator a reasonable opportunity to explain the circumstances surrounding the accident, including anything the operator believes contributed to its cause. The operator may present written evidence relative to the accident.
4. In making its decision, the board shall use the definitions of preventable accident and nonpreventable accident in section 4-11-01-01. All decisions must be made without prejudice or bias and must be based solely on facts presented through reports submitted or testimony given to the board. Decisions must be based on general guidelines of the defensive driving concept as defined in section 4-11-01-01.
5. If the board finds an accident preventable, it shall recommend corrective actions to the head of the agency employing the operator. The recommendations may include the corrective actions in section 4-11-01-01. It is the employing agency head's responsibility to decide what corrective actions will be implemented.
6. Board records must contain the decision and be kept on file at the office of risk management for a period of three years following the year in which the accident occurred.
7. The board shall issue to the operator and the operator's agency head a notification, in writing, of the board's decision within seven business days of the date of the decision.
  - a. This notification must advise the operator of the right to request reconsideration of the decision.
  - b. If the accident is classified as preventable and the board recommends any type of corrective action as a result, the notification must include:
    - (1) The classification;

- (2) The recommended corrective actions; and
  - (3) The operator's right to request the board to reconsider its decision.
8. An operator who disagrees with the original classification or recommended corrective actions has the right to request reconsideration by the board. Reconsideration procedures include:
- a. Filing a written notice of the request for reconsideration with the director of the risk management division of the office of management and budget within fourteen business days after the notification was mailed to the operator. The request must include any pertinent new information the operator would like the board to consider and a brief statement of the grounds for reconsideration.
  - b. If the director of risk management determines the additional information provided by the operator warrants reconsideration by the board, the additional information must be reviewed at a subsequent board meeting. The operator has the right to appear at the meeting and present evidence or witnesses who can offer relevant information.
  - c. The operator will be paid the operator's regular salary, will be reimbursed for travel expenses, and may not be required to take any leave for time needed to assist the board in its review. Any costs associated with corrective actions must be borne by the operator's employing agency.
  - d. The board reserves the right to change its classification or recommendation based on any additional information the operator presents in the request for reconsideration.
  - e. If the director of risk management determines the additional information provided with the request for reconsideration does not support reconsideration, the original decision by the board is final and the matter will not be scheduled for reconsideration.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

**4-11-01-05. Board designation as loss control committee.** The board is a state agency loss control committee under North Dakota Century Code section 32-12.2-12. All of the board's records, meetings, and current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony contained in that section.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02, 32-12.2-14  
**Law Implemented:** NDCC 32-12.2-14



**TITLE 20**  
**Dental Examiners, Board of**



APRIL 2000

CHAPTER 20-01-02

**20-01-02-01. Definitions.** Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
2. "Board certified" means the dentist has been certified in a specialty area where there is a certifying body approved by the commission on dental accreditation of the American dental association.
3. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice where there is a certifying body approved by the commission on dental accreditation of the American dental association.
4. "Certified dental assistant" means a dental assistant who has satisfactorily completed the educational requirements specified by the commission on dental accreditation of the American dental association for dental assistants or has two

years of full-time work experience, and who has passed the dental assisting national board certification examination for dental assistants.

5. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.
6. "Conscious sedation" means a drug-induced state in which the patient is calmed and relaxed, capable of making rational responses to commands and has all protective reflexes intact, including the ability to clear and maintain the patient's own airway in a patent state, but does not include nitrous oxide sedation.
7. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.
8. "Dental assistant" means a person who under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.
9. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota state board of dental examiners.
10. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.
11. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

12. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
13. "General anesthesia" means a controlled state of unconsciousness produced by pharmacologic or nonpharmacologic methods, or a combination thereof, accompanied by a partial or complete loss of protective reflexes including an inability to independently maintain an airway and to respond purposefully to physical stimulation or verbal commands.
14. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.
15. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
16. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
17. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.
- ~~17-~~ 18. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist.
- ~~18-~~ 19. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- ~~19-~~ 20. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental

assistant to aid the treatment by concurrently performing a supportive procedure.

- ~~20-~~ 21. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the annual registration.
- ~~21-~~ 22. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week, has completed the dental assisting national board (DANB) infection control seminar and passed the x-ray and infection control portions of the DANB exam, and has applied to the board and paid the certificate fee determined by the board.
- ~~22-~~ 23. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has completed two years of full-time work experience as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota state board of dental examiners.
- ~~23-~~ 24. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's annual registration certificate.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-20-02, 43-20-12, 43-28-06

## CHAPTER 20-02-01

**20-02-01-03. Nitrous oxide.** A duly licensed dentist may use nitrous oxide for treating patients only when the following conditions are met:

1. Documentation has been provided by the dentist to the board that verifies completion of sixteen hours of instruction or continuing professional education dealing specifically with the use of nitrous oxide. In the absence of documentation of classroom training, the dentist must provide proof acceptable to the board that demonstrates three years of practical experience in the use of nitrous oxide.
2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a certified registered dental assistant utilizing direct supervision only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or certified registered dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient.
3. The dentist must provide and document training for the dental hygienist or certified registered dental assistant in the proper and safe operation of the analgesia machine being used, including the emergency procedures to be employed if required.

**History:** Effective February 1, 1992; amended effective May 1, 1996; April 1, 2000.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-04.1. Restricted license to practice dentistry.** The board may grant a restricted license to practice dentistry at a single specific location in North Dakota, renewable annually by application to the board, when the following conditions are met:

1. The dentist is currently licensed in the state of Minnesota.
2. The dentist is actively engaged in dental practice in Moorhead, Minnesota.
3. The dentist wishes to participate in the Fargo-Moorhead community dental emergency treatment service and see emergency

dental patients as a member of the emergency call rotation schedule.

4. The dentist agrees to treat only emergency dental patients who have been referred by the Fargo-Moorhead community dental emergency treatment service for care ~~and only at the dental emergency treatment facility located at Dakota Hospital in Fargo, North Dakota.~~
5. The dentist has made application for a restricted dental license in the manner prescribed by the board.
6. The dentist has paid the nonrefundable application and license fee prescribed by the board.
7. If the Fargo-Moorhead community dental emergency treatment service ceases to function ~~or if Dakota Hospital in Fargo, North Dakota, no longer provides a community dental emergency treatment facility,~~ licenses issued under provisions of this rule are automatically revoked.

**History:** Effective October 1, 1993; amended effective April 1, 2000.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

20-02-01-04.2. Volunteer license to practice dentistry. The board may grant a volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, when the following conditions are met:

1. The dentist is formerly licensed in the state of North Dakota and is in good standing with the board.
2. The dentist agrees to provide primary health services without remuneration in a board-approved setting.
3. The dentist holds a current CPR certification.
4. The dentist has completed continuing education requirements of the board.
5. The dentist has made application for a volunteer dental license in a manner prescribed by the board.
6. The dentist has paid the nonrefundable application and license fee prescribed by the board.

**History:** Effective April 1, 2000.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

## CHAPTER 20-03-01

**20-03-01-01. Duties.** A dental assistant may perform the services listed in subsections 1 through 6 under direct supervision of a licensed dentist. A dental assistant may perform the duties set forth in subsections 7 through ~~27~~ 28 only if the dental assistant is a dental assisting ~~national board certified dental assistant; the dental assistant has a certificate of successful completion of a course in dental assisting from a school recognized by the American dental association; or the dental assistant has successfully completed a course approved by the North Dakota board of dental examiners~~ registered dental assistant. A qualified dental assistant may perform the duties set out in subsections 1 through 7.

1. Take and record pulse, blood pressure, and temperature.
2. Take and record preliminary dental and medical history for the interpretation by the dentist.
3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
4. Receive removable dental prosthesis for cleaning or repair.
5. Take impressions for study casts.
6. Hold impression trays in the mouth (e.g. reversible hydrocolloids, rubber base).
7. Take dental radiographs.
8. Remove sutures.
9. Apply anticariogenic agents topically.
10. Place and remove rubber dams.
11. Remove excess supragingival cement from coronal surfaces of teeth with hand instruments only.
12. Place and remove orthodontic wires or appliances that have been activated by the dentist.
13. Tie ligature wires or elastic ties.
14. Preselect and prefit orthodontic bands.
15. Fabricate, place, and remove a temporary crown or onlay. This applies only to a tooth or teeth actively under treatment for which a permanent restoration is being fabricated.

16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
17. Place and remove periodontal dressings.
18. Place orthodontic elastic-type separators.
19. Remove ligature wires or elastic ties, or both.
20. Remove arch wires.
21. Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.
22. Perform nonsurgical clinical and laboratory oral diagnosis tests for interpretation by the dentist.
23. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.
24. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
25. Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards or rapid palatal expanders, or both.
26. Apply desensitizing solutions to the external surfaces of the teeth.
27. Place and remove matrix bands.
28. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the teeth.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-12

**20-03-01-02. Prohibited services.** A dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics.

4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Placing or contouring of a final restoration.
6. Any intraoral procedure which would lead to the fabrication of any appliance, with the exception of taking impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards and rapid palatal expanders.
7. Activating any type of orthodontic appliance.
8. Cementing or removing orthodontic bands.
9. Direct bonding or removal of orthodontic brackets.
10. Apply pit and fissure sealants.
11. Placing bases or cavity liners.
12. Scaling, root planing, or gingival curettage.
13. Measuring the gingival sulcus with a periodontal probe.

**History:** Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-12

**20-03-01-03. Annual registration of dental assistants performing expanded duties.**

1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through 27 28 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied by a fee determined by the board. Thereafter, on a yearly basis, before expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the executive director of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.

2. A certificate of registration may be issued by the board to a dental assistant when:
  - a. The dental assistant has applied to the board and paid the registration fee determined by the board; and
  - b. The dental assistant possesses one of the following professional qualifications:
    - (1) The dental assistant is currently dental assistant certified by the dental assisting national board;
    - (2) The dental assistant has completed a course in dental assisting from a school of dental assisting accredited by the commission on dental accreditation of the American dental association; or
    - (3) The dental assistant has completed a course in dental assisting which is approved by the North Dakota board of dental examiners.
3. Every registered dental assistant performing expanded duties shall provide the board a current business mailing address. A registered dental assistant may not practice in this state for more than thirty days after a change of business address without providing the board with written notice of the new address by first-class mail.
4. Each year registered dental assistants performing expanded duties shall submit to the board with the annual registration evidence of attendance or participation in continuing dental education acceptable to the board. To remain in good standing, a registered dental assistant performing expanded duties must complete at least eight hours of continuing education each year. The board shall suspend the registration of any person who fails to comply with this section.
5. A certificate of qualification to take dental radiographs (allows subsections 1 through 7 in section 20-03-01-01) may be issued by the board to a dental assistant when:
  - a. The dental assistant has applied to the board and paid the certificate fee determined by the board.
  - b. The dental assistant has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week.
  - c. The dental assistant has completed ~~the dental assisting national board (DANB) infection control seminar~~ a board-approved infection control training program and passed the x-ray and infection control portions of the dental assisting national board exam.

6. A dental assistant who is not registered or qualified may, at the direction of a licensed dentist, perform only basic dental assisting services listed in subsections 1 through 6 of section 20-03-01-01.
7. Current certification in cardiopulmonary resuscitation shall be required for registration of all dental assistants.

**History:** Effective October 1, 1993; amended effective May 1, 1996; July 1, 1998; April 1, 2000.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

## CHAPTER 20-04-01

**20-04-01-01. Duties.** A dental hygienist may perform the following services under the general, direct, indirect, or modified general supervision of a dentist.

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Take dental radiographs.
8. Hold impression trays in the mouth after placement by a dentist (e.g. reversible hydrocolloids, rubber base, etc.).
9. Receive removable dental prosthesis for cleaning and repair.
10. Remove sutures.
11. Apply anticariogenic agents topically.
12. Place and remove rubber dams.
13. Place and remove orthodontic wires or appliances, or both, that have been activated by the dentist.
14. Tie ligature wires or elastic ties, or both.
15. Preselect and prefit orthodontic bands.
16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
17. Fabricate, place, and remove a temporary crown or onlay. This applies only to a tooth or teeth actively under treatment for which a permanent restoration is being fabricated.

18. Place and remove periodontal dressings.
19. Place orthodontic elastic-type separators.
20. Remove ligature wires or elastic ties, or both.
21. Remove arch wires.
22. Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.
23. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
24. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
25. Apply etching solutions to teeth and etch enamel and place pit and fissure sealants.
26. Take impressions for passive post treatment orthodontic retainers which do not replace missing teeth. Dental hygienists may take impressions for athletic mouth guards or rapid palatal expanders, or both.
27. Apply desensitizing solutions to the external surfaces of the teeth.
28. Apply therapeutic agents subgingivally for the treatment of periodontal disease.
29. Place and remove matrix bands.
- ~~29.~~ 30. Provide oral hygiene treatment planning.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-03

## CHAPTER 20-05-01

**20-05-01-01. Fees.** The following fees apply to the services listed:

1. The nonrefundable fee to process an application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is two hundred dollars for a dentist and fifty-five dollars for a dental hygienist.
2. The nonrefundable fee to process an application for a license by a review of the applicant's professional credentials without additional clinical examination is four hundred fifty dollars for a dentist and one hundred sixty-five dollars for a dental hygienist.
3. The nonrefundable fee to process an application for a temporary license to practice dentistry is one hundred sixty dollars.
4. The certificate of registration annual renewal fee is one hundred ten dollars for a dentist and fifty-five dollars for a dental hygienist. The fee for annual registration for registered or qualified dental assistants is thirty-five dollars.
5. In addition to the fee for renewal, the penalty for late renewal of the annual certificate of registration is one hundred ten dollars for dentists, fifty-five dollars for dental hygienists, and thirty-five dollars for dental assistants.
6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is forty-five dollars.
7. The fee to reactivate a retired dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars. Maximum number of years will be five (maximum fee five hundred fifty dollars for dentists; three hundred twenty-five dollars for hygienists).
8. The nonrefundable fee to process an application by a Moorhead, Minnesota, dentist for a restricted dental license to treat emergency dental patients at ~~Dakota-Hospital-in-Fargo,-North Dakota~~; board-approved settings is one hundred dollars.
9. The annual registration fee for renewal of a restricted dental license to treat emergency dental patients at ~~Dakota--Hospital~~

in--Fargo,--North--Dakota, board-approved settings is fifty dollars.

10. The fee for an onsite facility inspection to obtain a permit for anesthesia use will be at a rate similar to compensation paid board members for services rendered to the state of North Dakota.
11. The fee for initial application and annual renewal of a permit to use general anesthesia or conscious sedation is fifty dollars.
12. The fee for a volunteer dental license is thirty-five dollars.

**History:** Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-27



**TITLE 50**  
**Medical Examiners, Board of**



MAY 2000

**STAFF COMMENT:** Chapter 50-02-13 contains all new material and is not underscored so as to improve readability.

**CHAPTER 50-02-13  
RESIDENT LICENSURE**

Section	
50-02-13-01	Definitions
50-02-13-02	License Requirement
50-02-13-03	Qualifications
50-02-13-04	Applications
50-02-13-05	Scope of Practice
50-02-13-06	Discipline
50-02-13-07	Period of Licensure
50-02-13-08	Reporting Requirements
50-02-13-09	Fees

**50-02-13-01. Definitions.** As used in this chapter:

1. "Approved postgraduate training program" means a postgraduate training program approved by the accreditation council for graduate medical education.
2. "Board" means the state board of medical examiners.
3. "Resident" means a person who is enrolled in an approved postgraduate training program.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 43-17-18

**50-02-13-02. License requirement.** A person may not participate in a postgraduate training program in this state unless that person has first been granted a license by the board.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 43-17-18

**50-02-13-03. Qualifications.** The board may issue a postgraduate training license to an applicant who meets each of the following requirements:

1. The applicant is enrolled in an approved postgraduate training program within the state of North Dakota;
2. The applicant meets all qualifications for permanent licensure except those requirements pertaining to postgraduate training and the examination requirement specified in North Dakota Century Code section 43-17-18; and
3. The applicant has paid the prescribed fee.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 43-17-18

**50-02-13-04. Applications.** Applications for a postgraduate training license or the annual renewal of a postgraduate training license must be submitted to the office of the board upon such forms as are supplied by the board or otherwise approved by the board. The board may require any applicant to appear for an interview regarding the applicant's qualifications for licensure. The board shall establish a policy setting forth the criteria used in determining which applicants will be required to appear for such interviews.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 43-17-18

**50-02-13-05. Scope of practice.** A postgraduate training license only authorizes the person receiving that license to practice within the context of an approved postgraduate training program and does not authorize that person to engage in the private practice of medicine or otherwise practice medicine outside the scope of the postgraduate training program.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 43-17-18

**50-02-13-06. Discipline.** Individuals who have been granted a postgraduate training license are subject to the board's disciplinary authority as specified in North Dakota Century Code chapters 43-17 and 43-17.1 and a postgraduate training license may be revoked if:

1. The individual to whom that license was issued ceases to be enrolled in a postgraduate training program in this state; or
2. The individual to whom that license was issued engages in the practice of medicine outside the scope of a postgraduate training program.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

**50-02-13-07. Period of licensure.** A postgraduate training license issued under section 50-02-13-03 is valid for a period of twelve months, unless it is revoked, suspended, or otherwise limited by the board. However, the board may issue a temporary postgraduate training license to allow the applicant to participate in postgraduate training between the time the application is submitted to the board's office and the time of the next meeting of the board. A temporary postgraduate training license may not be issued if the application file contains significant derogatory information.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

**50-02-13-08. Reporting requirements.** A person holding a postgraduate training license is subject to the mandatory reporting requirements specified in North Dakota Century Code section 43-17.1-05.1. In addition to the requirements imposed under North Dakota Century Code section 43-17.1-05.1, the director of each postgraduate training program must promptly report the following circumstances to the board's investigative panels:

1. The termination or resignation of a resident for any reason, including poor academic performance.
2. The imposition of sanctions against a resident for reasons other than poor academic performance.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

**50-02-13-09. Fees.** The annual fee for a postgraduate training license is twenty-five dollars.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 43-17-18

## CHAPTER 50-03-03

**50-03-03-03. Certification requirement exemption.** Any person possessing emergency medical services skills over and above those defined by the ~~North-Dakota~~ state department of health as basic life support skills may perform those skills only if under the direction of a physician who has assumed responsibility for the services of that person through a written statement on file with the office of the ~~board--of medical--examiners~~ state department of health, division of emergency health services. That person must have met the training requirements of the ~~North-Dakota~~ state department of health for such skills.

**History:** Effective February 1, 1985; amended effective November 1, 1995; May 1, 2000.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**50-03-03-05. Supervision.** Every emergency medical technician certified to perform emergency medical services must be under the direction and responsibility of at least one physician licensed to practice medicine in this state. This responsibility must be by the written express agreement of the physician or physicians, a copy of which is on file in the office of the ~~board-of--medical--examiners~~ department of health, division of emergency health services.

**History:** Effective February 1, 1985; amended effective May 1, 2000.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**50-03-03-06. Agreement termination.** When any physician terminates an agreement to supervise and be responsible for a certified emergency medical technician or any other person as stated in this chapter, the termination is not effective until written notification thereof has been received by the ~~board--of--medical--examiners~~ state department of health, division of emergency health services, at its office in Bismarck, North Dakota.

**History:** Effective February 1, 1985; amended effective May 1, 2000.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)



**TITLE 62**  
**Plumbing, Board of**



MARCH 2000

CHAPTER 62-01-01

**62-01-01-01. Organization of board of plumbing.**

1. **History.** The 1941 legislative assembly passed a state plumbing law, codified as North Dakota Century Code chapter 43-18. The chapter was intended to promote and protect the public health through the regulation of the business of plumbing by creating a state board of plumbing and empowering the board and the state department of health to adopt rules governing the practice of plumbing and establishing a code of minimum standards of plumbing work. The 1973 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.1, which regulates the installation of water conditioning equipment. The 1987 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.2, which regulates the installation of sewer and water services.
2. **Board membership.** The board of plumbing consists of the chief sanitary engineer of the state department of health and ~~consolidated--laboratories~~, and four persons appointed by the governor: one a master plumber; one a journeyman plumber; one a registered professional engineer; and one a representative of the consuming public. The four appointed members of the board serve four-year terms, with one term expiring each year.
3. **Secretary and chief inspector.** The secretary and chief inspector of the board is appointed by the board and is responsible for administration of the board's activities.

4. **Inquiries.** Inquiries--regarding--the-board All inquiries and communication relating to licensing, plumbing installation, and inspections may be addressed ~~to the secretary and chief inspector~~ directed to:

Mr.--Robert-J.--Leingang  
North Dakota State Plumbing Board  
204 West Thayer Avenue  
Bismarck, North Dakota 58501

Phone (701) 328-9977  
Fax (701) 328-9979  
E-mail ndplumb@state.nd.us

**History:** Amended effective November 1, 1981; September 1, 1987; April 1, 1994; March 1, 2000.  
**General Authority:** NDCC 28-32-02.1  
**Law Implemented:** NDCC 28-32-02.1

CHAPTER 62-02-01

62-02-01-08. Application for plumbing installation certificate. All plumbing installations requiring inspection must have a plumbing installation certificate properly executed by the master or journeyman plumber in charge of the installation. The board shall have on hand a supply of certificates for distribution to the person in charge of the installation.

1. Inspection fees for each certificate issued shall be according to the schedule of fees shown on the plumbing installation certificate. If work has commenced prior to submittal of certificate and proper fees, the fee will be double or actual cost incurred to investigate, whichever is less. Requested inspection, reinspection, or inspection for which no fee is specifically indicated shall be charged at twenty-five dollars per hour, plus travel expense.
2. The certificate must be signed by the applicant and original returned to the board along with the proper fees prior to commencement of work. The duplicate copy shall be retained by the plumbing contractor, and the triplicate copy shall be submitted to the building owner. The issuing certificate fee will be charged for each certificate that must be reissued.  
Repealed effective March 1, 2000.

History: Amended effective February 1, 1994.  
General Authority: NDCC-43-18-08  
Law Implemented: NDCC-43-18-17:2, -43-18-17:3

**ARTICLE 62-03**  
**STATE PLUMBING CODE**

[Repealed effective March 1, 2000]

**STAFF COMMENT:** Article 62-03.1 contains all new material and is not underscored so as to improve readability.

## **ARTICLE 62-03.1**

### **PLUMBING INSTALLATION STANDARDS**

Chapter	
62-03.1-01	Administration
62-03.1-02	General Regulations
62-03.1-03	Private Sewage Disposal Systems

### **CHAPTER 62-03.1-01 ADMINISTRATION**

Section	
62-03.1-01-01	Conformance With Uniform Plumbing Code - Exceptions
62-03.1-01-02	General Statement of Policy
62-03.1-01-03	Interpretive Rules
62-03.1-01-04	Administrative Powers and Duties
62-03.1-01-05	Application for Plumbing Installation Certificate

#### **62-03.1-01-01. Conformance with Uniform Plumbing Code - Exceptions.**

1. State plumbing code defined. The board adopts, as the state plumbing code, the 2000 edition of the Uniform Plumbing Code including appendices E, I, and L, published by the international association of plumbing and mechanical officials, with the exceptions and modifications described in section 62-03.1-02-02 and chapter 62-03.1-03.
2. All plumbing as defined in North Dakota Century Code section 43-18-01, including materials, must meet or exceed the minimum provisions of this article and the Uniform Plumbing Code.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-01-02. General statement of policy.** The scope of this code excludes the development of specific standards related to any, all, or any combination of the composition, dimensions, or mechanical and physical properties of materials, fixtures, devices, and equipment used

or installed in plumbing systems. The inclusion of a material, even though indicated as approved for purposes of the code, does not infer unqualified endorsement as to its selection of serviceability in any or every installation. The establishment of trade jurisdictional areas is not within the scope of this code.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-01-03. Interpretive rules.** Some of the details of plumbing construction may vary, but the basic sanitary and safety principles desirable and necessary to protect the health of the people are the same everywhere. As interpretations may be required and as unforeseen situations arise which are not specifically covered in the code, the following principles must be used to define the intent of this code.

1. **All occupied premises must have potable water.** All premises intended for human habitation, occupancy, or use must be provided with a supply of potable water. Such a water supply must not be connected with unsafe water sources, nor be subject to the hazards of backflow.
2. **Adequate water required.** Plumbing fixtures, devices, and appurtenances must be supplied with water in sufficient volume and at pressures adequate to enable them to function properly and without undue noise under normal conditions of use.
3. **Hot water required.** Hot water must be supplied to all plumbing fixtures that normally need or require hot water for their proper use and function.
4. **Water conservation.** Plumbing must be designed and adjusted to use the minimum quantity of water consistent with proper performance and cleaning.
5. **Safety devices.** Devices for heating and storing water must be so designed and installed as to guard against dangers from explosion or overheating.
6. **Use public sewer where available.** Every building with installed plumbing fixtures and intended for human habitation, occupancy, or use, and located on premises where a public sewer is on or passes said premises within a reasonable distance, must be connected to the sewer.
7. **Required plumbing fixtures.** Each family dwelling unit must have at least one water closet, one lavatory, one kitchen-type sink, and one bathtub or shower to meet the basic requirements of sanitation and personal hygiene.

All other structures for human habitation must be equipped with sufficient sanitary facilities. Plumbing fixtures must be made of durable, smooth, nonabsorbent, and corrosion-resistant material and must be free from concealed fouling surfaces.

8. **Drainage system.** The drainage system must be designed, constructed, and maintained to guard against fouling, deposit of solids, and clogging and with adequate cleanouts so arranged that the pipes may be readily cleaned.
9. **Durable materials and good workmanship.** The piping of the plumbing system must be of durable material, free from defective workmanship, and so designed and constructed as to give satisfactory service for its reasonably expected life.
10. **Fixture traps.** Each fixture directly connected to the drainage system must be equipped with a liquid seal trap.
11. **Trap seals must be protected.** The drainage system must be designed to provide an adequate circulation of air in all pipes with no danger of siphonage, aspiration, or forcing of trap seals under conditions of ordinary use.
12. **Exhaust foul air to outside.** Each vent terminal must extend to the outer air and be so installed as to minimize the possibilities of clogging and the return of foul air to the building.
13. **Test the plumbing system.** The plumbing system must be subjected to such tests as will effectively disclose all leaks and defects in the work or the material.
14. **Exclude certain substances from the plumbing system.** A substance that will clog or accentuate clogging of pipes, produce explosive mixtures, destroy the pipes or their joints, or interfere unduly with the sewage disposal process must not be allowed to enter the building drainage system.
15. **Prevent contamination.** Proper protection must be provided to prevent contamination of food, water, sterile goods, and similar materials by backflow of sewage. When necessary, the fixture, device, or appliance must be connected indirectly with the building drainage system.
16. **Light and ventilation.** A water closet or similar fixture must not be located in a room or compartment that is not properly lighted and ventilated.
17. **Individual sewage disposal system.** If water closets or other plumbing fixtures are installed in buildings where there is no sewer within a reasonable distance, suitable provision must be

made for disposing of the sewage by some accepted method of sewage treatment and disposal.

18. **Prevent sewer flooding.** Where a plumbing drainage system is subject to backflow of sewage from the public sewer or private disposal system, suitable provision must be made to prevent its overflow in the building.
19. **Proper maintenance.** Plumbing systems must be maintained in a safe and serviceable condition from the standpoint of both mechanics and health.
20. **Fixtures must be accessible.** All plumbing fixtures must be so installed with regard to spacing as to be accessible for their intended use and for cleaning.
21. **Structural safety.** Plumbing must be installed with due regard to preservation of the strength of structural members and prevention of damage to walls and other surfaces through fixture usage.
22. **Protect ground and surface water.** Sewage or other waste must not be discharged into surface or subsurface water unless it has first been subjected to some acceptable form of treatment.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-01-04. Administrative powers and duties.** The secretary-chief inspector and other inspectors of the North Dakota state plumbing board, under the direction of the board, shall administer laws, rules, plumbing installation standards of this state, and the Uniform Plumbing Code. In all cases when any action is taken by the secretary-chief inspector or inspectors of the board to enforce the provisions of any sections contained in this article or the Uniform Plumbing Code, such acts must be done in the name of and on behalf of the state.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-01-05. Application for plumbing installation certificate.** Any plumbing installation requiring inspection must have a plumbing installation certificate properly executed by the master or journeyman plumber in charge of the installation. The board shall have on hand a supply of certificates for distribution to the person in charge of the installation.

1. Inspection fees for each certificate issued must be according to the schedule of fees shown on the plumbing installation certificate. If work has commenced prior to submittal of the certificate and proper fees, the fee will be double or actual cost incurred to investigate, whichever is less. Requested inspection, reinspection, or inspection for which no fee is specifically indicated must be charged at twenty-five dollars per hour, plus travel expense.
2. The certificate must be signed by the applicant and the original returned to the board along with the proper fees prior to commencement of work. The duplicate copy must be retained by the plumbing contractor and the triplicate copy must be submitted to the building owner. The issuing certificate fee must be charged for each certificate that must be reissued.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-08

**Law Implemented:** NDCC 43-18-17.2, 43-18-17.3

**CHAPTER 62-03.1-02  
GENERAL REGULATIONS**

Section

62-03.1-02-01 Conformance With Other Regulations  
62-03.1-02-02 Uniform Plumbing Code - Exceptions and  
Modifications

**62-03.1-02-01. Conformance with other regulations.** Nothing in this article may be construed to prevent the application of local ordinances or other legal requirements.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-02-02. Uniform Plumbing Code - Exceptions and modifications.** The following chapters and appendices of the Uniform Plumbing Code are modified as follows:

1. **Permits and inspections 103.0.** The following subsections do not apply: 103.1 through 103.4; 103.5.1.2, 103.5.3.1, 103.5.6, and table 1-1.
2. **Definition of terms 202.0.** Add to 211.0-I-: "Inspection report" means a notice, written by a plumbing inspector to the person responsible for the plumbing installation, describing work inspected and stating violations and noncompliance of rules and regulations as listed, which must be corrected within a designated time.

Add to 218.0-P-: "Plumbing installation certificate" means a document consisting of one or more copies certifying that certain plumbing installations, plumbing fixtures, plumbing appliances, and other appurtenances were installed in conformity with the rules and regulations of the plumbing board. "Permit" as used in the Uniform Plumbing Code has the same meaning as plumbing installation certificate.

"Plumbing" add to definition: Maintenance does not include making repairs to faucets, valves, appliances, and fixtures, or removal of stoppages in waste or drainage pipes. See also North Dakota Century Code section 43-18-01.

"Plumbing system": Not included in this definition are medical gas and vacuum systems, fuel gas piping, and vents for water heaters.

3. **Protection of piping materials and structures 313.0.** Add to 313.6: Water service piping must be installed with a minimum

earth cover of seven feet [2.13 meters] or below record frostlines. Minimum earth cover for building sewers must be four feet [1.22 meters].

4. **Metered faucets 402.6.** Add: Mixing-type hand-closing faucets may be installed on lavatories for public use. Lavatories must have waste outlets not less than one and one-fourth inches [31.75 millimeters] in diameter, with open strainers.

Prohibited urinal 406.2. Add: Urinals with nonintegral traps shall be prohibited.

Water closets 409.1. Add: Water closets in private rooms of hotels, motels, dormitories, and boarding houses must be of the elongated bowl type.

Table 4-1 minimum plumbing facilities. Add to the following building occupancies:

Type of Building or Occupancy	Water Closets	Urinals
Assembly Places - Theaters, Auditoriums, Convention Halls, etc., for public use	Female	Male
	1: 1-15	0: 1-25
	3: 16-50	1: 26-100
Office or Public Buildings	Female	Male
	1: 1-15	0: 1-25
	2: 16-30	1: 26-100
	3: 31-50	
Restaurants, Pubs, and Lounges		Male
		0: 1-50 1: 51-150

5. **Permit 503.0.** Does not apply.
6. **Exception 604.2.** Add: Type M copper shall not be used underground outside of structures.

Valves 605.0. Add to 605.2: Each building water supply shall be provided with a fullway valve installed on the inlet side of each water meter. Valves up to and including two inches [50.8 millimeters] in size must be a ball valve.

Add to 605.3: In single and multidwelling units with two or more bathroom groups, one or more shutoff valves must be provided so that each group may be isolated from the other. In multidwelling units, wall hydrants must be separately controlled within eight feet [2.438 meters] by an accessible valve inside the building.

Add to 605.5: All water closets and kitchen sinks must have individual fixture valves installed.

7. **Molded rubber coupling joints 705.1.6.** Add: For aboveground installations an approved shielded coupling must be used to prevent outward expansion.
8. **Food and beverage handling establishments 801.2.** Add to 801.2.3: Food preparation sinks must be directly connected to the building drain on a line to the sewer side of a floor drain trap located adjacent to the sink.

Bar and fountain sink traps 801.3. Add: Where the fixture cannot be vented a special island sink vent or a combination waste and vent system must be used.

9. **Vertical wet venting 908.0.** Add to 908.1: Special horizontal wet venting shall be permitted according to appendix L 6.0 special venting of fixtures.

Special venting for island fixtures 909.0. Add: A combination waste and vent system may also be used for island sinks. The vertical waste pipe must be the same size as required for the combination waste and vent. The fixture trap size must be as required by chapter 7.

Combination waste and vent system 910.0. 910.2 does not apply.

10. **Traps and interceptors.** Chapter 10 no change.
11. **Storm drainage.** Chapter 11 no change.
12. **Fuel piping.** Chapter 12 does not apply.
13. **Medical gas systems.** Chapter 13 does not apply.
14. **Mandatory referenced standards.** Chapter 14 no change.
15. **Firestop protection for DMV and stormwater applications.** Chapter 15 does not apply.
16. **Appendix E, manufactured or mobile home parks and recreational vehicle parks.** Add to E5: The department having jurisdiction shall be the division of food and lodging of the state department of health. See also North Dakota Century Code

chapter 23-16 and North Dakota Administrative Code section  
33-33-01-02.

**History:** Effective March 1, 2000.  
**General Authority:** NDCC 43-18-09  
**Law Implemented:** NDCC 43-18-09

**CHAPTER 62-03.1-03  
PRIVATE SEWAGE DISPOSAL SYSTEMS**

Section

62-03.1-03-01	General Provisions
62-03.1-03-02	Installation - Excavator and Installer Requirements
62-03.1-03-03	Design of Individual Sewage System
62-03.1-03-04	Location of Sewage System
62-03.1-03-05	Percolation Tests
62-03.1-03-06	Soil Borings
62-03.1-03-07	Septic Tanks
62-03.1-03-08	Distribution Box
62-03.1-03-09	Absorption Trenches
62-03.1-03-10	Piping Material
62-03.1-03-11	Pumps and Pump Systems
62-03.1-03-12	Alternative Systems
62-03.1-03-13	Chemical Toilets
62-03.1-03-14	Privies
62-03.1-03-15	Septic Tank Pumps

**62-03.1-03-01. General provisions.**

1. All sewage treatment systems shall be constructed, added to, or altered in accordance with this chapter. When a public or noncommunity sewerage system is deemed available to a premise used for human occupancy if such premise is within two hundred feet [60.96 meters], the approving authority shall require that sewage be discharged into that system.
2. Where public or noncommunity sewage treatment systems are not available and construction of an individual sewage treatment system is contemplated for a building of human occupancy or use or addition to, or alteration of any existing sewage treatment system, the master plumber or sewer and water contractor, or septic system installer, previous to beginning any construction may be required to make application to the local or district health units for a written permit to make the desired installation.
3. "Sewage treatment" under this section means all private methods of collecting and disposing of domestic sewage including septic tanks, privies, chemical toilets, and any others.
4. All domestic sewage shall be disposed of by an approved method of collection, treatment, and effluent discharge. Domestic sewage or sewage effluent shall not be disposed of in any manner that will cause pollution of the ground surface, ground water, bathing area, lake, pond, watercourse, or create a nuisance. It shall not be discharged into any abandoned or

- unused well, or into any crevice, sink hole, or other opening either natural or artificial in a rock formation.
5. Where water under pressure is not available, all human body wastes shall be disposed of by depositing them in approved privies, chemical toilets, or such other installations acceptable to the administrative authority.
  6. Water-carried sewage from bathrooms, kitchens, laundry fixtures, and other household plumbing shall pass through a septic or other approved sedimentation tank prior to its discharge into the soil or into an alternative system. Where underground disposal for treatment is not feasible, consideration will be given to special methods of collection and disposal.
  7. The building contractor, owner, plumbing contractor, or disposal system installer are jointly responsible for compliance with this chapter.
  8. Abandoned disposal systems, septic tanks, pumping and other chambers, and seepage beds shall be disconnected from the buildings. The tanks and chambers shall be pumped out and filled with earth.
  9. No property shall be improved in excess of its capacity to properly absorb sewage effluent in the quantities and by the means provided in this code.
  10. When there is insufficient lot area or improper soil conditions for adequate sewage treatment for the building or land use proposed, and the administrative authority so finds, no building permit shall be issued and no private sewage treatment shall be permitted. Where space or soil conditions are critical, no building permit shall be issued until engineering data and test reports satisfactory to the administrative authority have been submitted and approved or a private sewage treatment system complying with the provisions of this article has first been designed.
  11. Nothing contained in this chapter shall be construed to prevent the administrative authority from requiring compliance with higher requirements than those contained herein where such higher requirements are essential to maintain a safe and sanitary condition.
  12. "Administrative authority" under this section means the North Dakota state plumbing board, North Dakota state department of health, district health units, county or city health departments which have expertise in onsite sewage treatment systems, or individual official, board, department, or agency established and authorized by a state, county, city, or other

political subdivision created by law to administer and enforce the provisions of this chapter.

13. "Continuing education" under this section means a structured, professionally presented curriculum dealing with onsite sewage treatment systems sanctioned wholly or in part by the administrative authority.
14. "Installer" under this section means an individual or contractor that engages in the construction of onsite sewage treatment systems. Homeowners who work on their own systems are not included in this definition.
15. "Mottled soil" under this section means soil from a soil boring which is marked with spots of contrasting colors. Any soil having spots of contrasting colors is considered to be mottled.
16. "Sewage treatment" under this section means all private methods of collecting and disposing of domestic sewage including septic tanks, privies, chemical toilets, and any others.
17. A "chamber or pump chamber" under this section means a watertight receptacle for receiving effluent from the septic tank which will be used for placement of an effluent grade pump to distribute that effluent to the treatment area.
18. "Noncommunity" under this section means a collector system for sewage disposal serving a group of homes which uses lagoons or other collective methods of disposal and treatment which are not otherwise regulated by the environmental protection agency or state regulations.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-02. Installation - Excavator and installer requirements.**

1. Individuals or business contractors may be required by the administrative authority to have or obtain a license or permit to install individual onsite sewage treatment systems as described in this chapter.
2. Where required by administrative authority, installers of septic systems must obtain at least eight contact hours of suitable continuing education every two years which pertains to onsite septic system installation. Reciprocity for training in other states can be made on an individual basis by the administrative authority.

3. The installer of a treatment system shall submit an "as built" drawing of the system to the administrative authority within thirty days after the system has been completed.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03.1-03-03. Design of individual sewage system.**

1. **Design.** The design of the individual sewage treatment system must take into consideration location with respect to wells or other sources of water supply, topography, water table, soil characteristics, area available, and maximum occupancy of the building.
2. **Type of system.** The type of system to be installed shall be determined on the basis of location, soil permeability, and ground water elevation.
3. **Sanitary sewage.** The system shall be designed to receive all sanitary sewage, including laundry waste, from the building. Drainage from footings or roofs shall not enter the system.
4. **Discharge.** The system shall consist of a septic tank discharging into either a subsurface treatment field or one or more seepage beds or into a combination of both, if found adequate as such and approved by the administrative authority.
5. **Ground water.** No plumbing fixture may be connected to any individual sewage treatment system where ground water may collect above the sewage treatment system causing a flooded condition, unless the elevation of the fixture trap is a sufficient height above the elevation of the finished grade of the ground in which the sewage treatment field is installed to prevent backup. The minimum separation distance from the bottom of the treatment area must equal or exceed twenty-four inches [60.96 centimeters].
6. **Alternate design.** Where soil conditions are such that neither of the systems mentioned in subsection 4 can be expected to operate satisfactorily, approval of an alternate design shall be secured from the administrative authority.
7. **Sewage flow.** Design criteria for sewage flow according to the type of establishment is indicated in the following table:

SEWAGE FLOWS ACCORDING TO TYPE OF ESTABLISHMENT

Type of Establishment	Gallons Per Person Per Day (Unless Otherwise Noted)
Airports (per passenger) .....	5
Apartments-multiple family (per resident) .....	60
Assembly halls (per seat) .....	2
Bars (per seat) .....	5
Bathhouses and swimming pools .....	10
Bowling alleys (per lane) .....	75
Camps:	
Campground with central comfort stations .....	35
With flush toilets, no showers .....	25
Construction camps (semipermanent) .....	50
Day camps (no meals served) .....	15
Resort camps (night and day) with limited plumbing .....	50
Luxury camps .....	100
Churches (per sanctuary seat) .....	5
Churches with kitchens (per sanctuary seat) .....	7
Cottages and small dwellings with seasonal occupancy .....	50
Country clubs (per member present) .....	25
Dwellings:	
Boardinghouses .....	50
Additional for nonresident boarders .....	10
Luxury residences and estates .....	150
Multiple family dwellings (apartments) .....	60
Roominghouses .....	40
Single-family dwellings .....	75
Factories (gallons per person, per shift, exclusive of industrial wastes) .....	35
Hospitals (per bed space) .....	250
Hotels (per guest) .....	50
Institutions other than hospitals (per bed space) ..	100
Laundries, self-service (gallons per machine) .....	500
Mobile home parks (per space) .....	250
Motels (per bed space) .....	50
Picnic parks (sanitary waste only) .....	5
Picnic parks with bathhouses, showers, and flush toilets .....	10
Restaurants (toilet and kitchen wastes per patron) ..	10
Restaurants (kitchen wastes per meal served) .....	3
Restaurants additional for bars and cocktail lounges .....	2
Schools:	
Boarding .....	75
Day, without gyms, cafeterias, or showers .....	15
Day, with gyms, cafeteria, and showers .....	25

Day, with cafeteria, but without gyms or showers .....	20
Service stations (per vehicle served) .....	10
Theaters:	
Movie (per auditorium seat) .....	5
Drive-in (per car space) .....	5
Travel trailer parks without individual water and sewer hookups (per space) .....	50
Travel trailer parks with individual water and sewer hookups (per space) .....	100
Workers:	
Construction (at semipermanent camps) .....	50
Day, at school and offices (per shift) .....	15

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-04. Location of sewage system.**

1. The minimum lot size in which a private treatment system may be installed is forty thousand square feet [3716.00 square meters]. Smaller lot sizes may be approved by the administrative authority if a centralized sewage treatment system is provided or the soil conditions present throughout the lot are such that a second treatment area is able to be installed in the lot.
2. The following table provides for the minimum distances that shall be observed in locating the various components of the treatment system:

	Well < 100'	Well >100'	Distribution Device	Treatment Area	Property Lines	Building
Bldg Sewer	100	50	-	-	-	-
Septic Tank	100	50	5	10	10	10
Distribution Device	100	50	-	-	10	20
Treatment Area	100	50	5	-	10	10
Well < 100'	-	-	100	100	n/a	n/a
Well > 100'	-	-	50	50	n/a	n/a
Water line (pressure)	-	-	10	10	n/a	n/a
(suction)	-	-	50	50	n/a	n/a
Surface Water bodies	n/a	n/a	100	100	n/a	n/a

3. All proposed sites for individual sewage treatment systems must be evaluated as to:
- a. Depth to the highest known or calculated ground water table or bedrock;
  - b. Soil conditions, properties, and permeability;
  - c. Slope;
  - d. The existence of lowlands, local surface depressions, and rock outcrops;
  - e. All legal setback requirements from existing and proposed buildings, property lines, sewage tanks, soil treatment systems, water supply wells, buried water pipes and utility lines, the ordinary high water mark of lakes, rivers, streams, flowages, and the location of all soil treatment systems and water supply wells on adjoining lots to the proposed soil treatment system, sewage tank, and water supply well; and
  - f. Surface water flooding probability.

4. Privies, septic tanks, and underground treatment means shall not be within two hundred feet [60.96 meters] measured horizontally from the high water level in the reservoir or the banks of tributary streams when situated less than three thousand feet [914.4 meters] upstream from potable water intake structures. Sewage treatment facilities situated beyond three thousand feet [914.4 meters] upstream from intake structures shall be located no less than one hundred feet [30.48 meters] measured horizontally from the high water level in the reservoir or the banks of the tributary streams.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-05. Percolation tests.** When percolation tests are required, they must be made as follows:

1. **Test hole dimensions and locations.** Each test hole must be six inches [15.24 centimeters] in diameter, have vertical sides, and be bored or dug to the depth of the bottom of the proposed individual sewage treatment system. Soil texture descriptions must be recorded noting depths where texture changes occur.

2. **Preparation of the test hole.** The bottom and sides of the hole must be carefully scratched to remove any smearing and to provide a natural soil surface into which water may penetrate.

All loose material must be removed from the bottom of the test hole and two inches [5.08 centimeters] of one-fourth-inch to three-fourths-inch [.635-centimeter to 1.90-centimeter] gravel must be added to protect the bottom from scouring.

3. **Soil saturation and swelling.** The hole must be carefully filled with clear water to a minimum depth of twelve inches [30.48 centimeters] over the soil at the bottom of the test hole and maintained for no less than four hours. The soil must then be allowed to swell for at least sixteen, but no more than thirty hours. In sandy soils, the saturation and swelling procedure is not required and the test may proceed if one filling of the hole has seeped away in less than ten minutes.

4. **Percolation rate measurement.**

- a. In sandy soils. Adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches [centimeters] to the nearest one-eighth inch [.34 centimeter] at approximately ten-minute intervals. A measurement can

also be made by determining the time it takes for the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point. If eight inches [20.32 centimeters] of water seeps away in less than ten minutes, a shorter interval between measurements must be used, but in no case may the water depth exceed eight inches [20.32 centimeters]. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent.

- b. In other soils. Adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches [centimeters] to the nearest one-eighth inch [.34 centimeter] at approximately thirty-minute intervals, refilling between measurements to maintain an eight-inch [20.32-centimeter] starting head. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent. The percolation rate can also be made by observing the time it takes the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point if a constant water depth of at least eight inches [20.32 centimeters] has been maintained for at least four hours prior to the measurement.

5. **Calculating the percolation rate.** Divide the time interval by the drop in water level to obtain the percolation rate in minutes per inch [2.54 centimeters].

Percolation rates determined for each test hole must be averaged to determine the final soil treatment system design.

A percolation test may not be run where frost exists below the depth of the proposed soil treatment system.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-06. Soil borings.** When soil borings are required, they must be made as follows:

1. Each boring or excavation must be made to a depth at least three feet [0.91 meters] deeper than the bottom of the proposed system or until bedrock or a water table is encountered, whichever is less.
2. A soil texture description must be recorded by depth and notations made where texture changes occur.

3. Particular effort must be made to determine the highest known water table by recording the first occurrence of mottling observed in the hole, or if mottling is not encountered, the open holes in clay or loam soils must be observed after standing undisturbed a minimum of sixteen hours, and depth to standing water, if present, must be measured.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-07. Septic tanks.**

1. **Liquid capacity.** The liquid capacity of all septic tanks shall conform to the tables contained in subsection 7 of section 62-03.1-03-03 and this subsection as determined by the number of bedrooms or apartment units in dwelling occupancies and the occupant load or the number of plumbing fixture units as determined from table 7-3 of the Uniform Plumbing Code, whichever is greater, in other building occupancies.

**CAPACITY OF SEPTIC TANKS \***

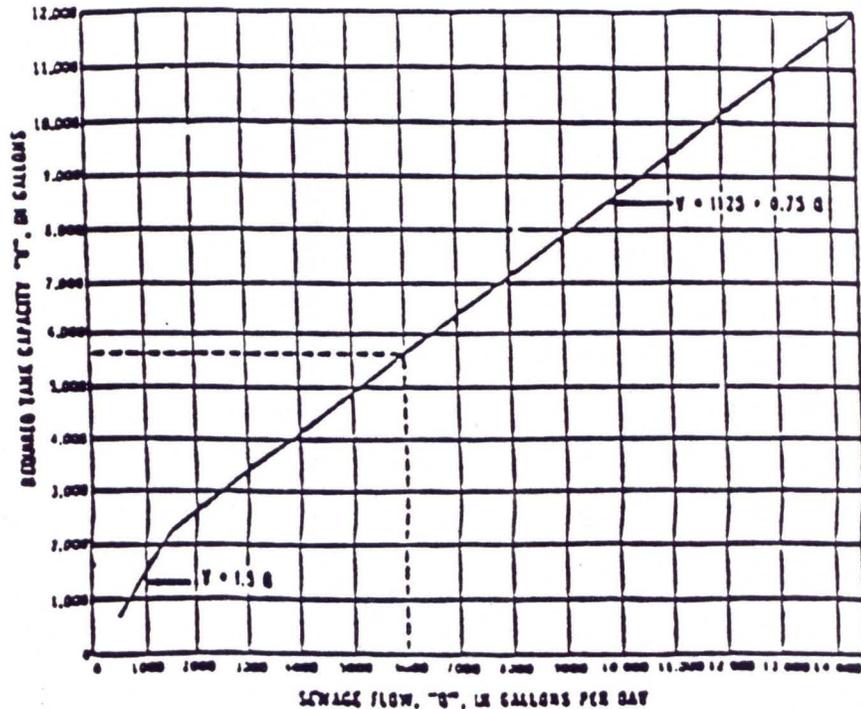
Single-Family Dwellings - Number of Bedrooms	Multiple Dwelling Units or Apartments - One Bedroom Each	Other Uses - Maximum Fixture Units Served	Minimum Septic Tank Working Capacity in Gallons
1-3		20	1000
4	2	25	1200
5 or 6	3	33	1500
7 or 8	4	45	2000
	5	55	2250
	6	60	2500
	7	70	2750
	8	80	3000
	9	90	3250
	10	100	3500

Extra bedroom, 150 gallons each.

Extra dwelling units over 10, 250 gallons each.

Extra fixture units over 100, 25 gallons per fixture unit.

\* NOTE: Septic tank sizes in this table include sludge storage capacity and the connection of domestic food waste disposal units without further volume increase.



2. **Septic tank construction.** Septic tanks must be constructed of sound durable materials not subject to excessive corrosion or decay and must be watertight. Each such tank must be structurally designed to withstand all anticipated earth or other loads and must be installed level and on a solid bed. All tanks regardless of material or method of construction must conform to the following criteria:
- a. The liquid depth of any septic tank or compartment shall be not less than thirty inches [76.20 centimeters], nor more than six and one-half feet [1.97 meters]. No tank may have an inside horizontal dimension less than twenty-four inches [60.96 centimeters].
  - b. The space in the tank between the liquid surface and the top of the inlet and outlet baffles must be not less than twenty percent of the total required liquid capacity, except that in horizontal cylindrical tanks this space must be not less than fifteen percent of the total required liquid capacity.
  - c. There must be at least one inch [2.54 centimeters] between the underside of the top of the tank and the highest point of the inlet and outlet devices. The inlet invert must be not less than three inches [7.62 centimeters] above the outlet invert.

- d. Baffles must be integrally cast with the tank, affixed with a permanent waterproof adhesive or affixed with stainless steel connectors, top and bottom, and be constructed of acid-resistant concrete, acid-resistant fiberglass or plastic.
- e. The inlet baffle must extend at least six inches [15.24 centimeters], but not more than twenty percent of the total liquid depth below, the liquid surface and at least one inch [2.54 centimeters] above the crown of the inlet sewer.
- f. The outlet baffle and the baffles between compartments must extend below the liquid surface a distance equal to forty percent of the liquid depth, except that the penetration of the indicated baffles or sanitary tees for horizontal cylindrical tanks must be thirty-five percent of the total liquid depth. They also must extend above the liquid surface. In no case may they extend less than six inches [15.24 centimeters] above the liquid surface.
- g. Inlet baffles must be no less than six inches [15.24 centimeters] or no more than twelve inches [30.48 centimeters] measured from the end of the inlet pipe to the nearest point on the baffle. Outlet baffles must be six inches [15.24 centimeters] measured from beginning of the outlet pipe to the nearest point on the baffle. Sanitary tees used as baffles must be at least four inches [10.16 centimeters] in diameter.
- h. The inlet and outlet must be located opposite each other along the axis of maximum dimension. The horizontal distance between the nearest points of the inlet and outlet devices must be at least four feet [1.22 meters].
- i. There may be one or more manholes. Manholes must be at least eighteen inches [45.72 centimeters] in diameter, and located within six feet [1.83 meters] of all walls of the tank. The manhole must extend through the cover to a point within twelve inches [30.48 centimeters] but no closer than six inches [15.24 centimeters] below finished grade. The manhole cover must be corrosion resistant, rated three hundred-pound [136.07-kilogram] load bearing, and covered with at least six inches [15.24 centimeters] of earth. When in the opinion of the administrative authority the manhole is permitted above finish grade, it must be safely secured.
- j. There must be an inspection pipe of at least four inches [10.16 centimeters] in diameter or a manhole over both the inlet and outlet devices. The inspection pipe must extend through the cover and be capped flush or above finished grade. A downward projection of the centerline

of the inspection pipe must be directly in line with the centerline of the inlet or outlet device.

**3. Multiple tanks.**

- a. When more than one tank is used to obtain the required liquid volume, the tanks must be connected in series.
- b. No more than four tanks in series can be used to obtain the required liquid volume.
- c. The first tank must be no smaller than any subsequent tanks in series.

**4. Septic tank materials.** See table 14-1 of the Uniform Plumbing Code.

**5. Depth of septic tank.** Where septic tanks are installed above frostline, precautions must be taken to prevent the septic tank from freezing.

**6. Service limited.** No septic tank shall serve more than one property unless authorized by the administrative authority.

**7. Disposal of effluent.** The effluent from all septic tanks shall be disposed of underground by subsurface absorption trench, seepage beds, or approved alternative systems.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-08. Distribution box.**

1. **Use.** A distribution box may be used when more than one line of absorption field or more than one seepage bed is used.
2. **Connection.** Each lateral line shall be connected separately to the distribution box and shall not be subdivided.
3. **Invert level.** The inlet invert shall be at least one inch [2.54 centimeters] above the invert of the outlets. The size of the distribution box shall be sufficient to accommodate the number of lateral lines.
4. **Watertight.** The distribution box shall be of watertight construction arranged to receive the septic tank effluent sewer and with an outlet or connecting line serving each trench or seepage bed.

5. **Inspection.** The sides of the box should extend to within a short distance of the ground surface to permit inspection and shall have a concrete marker at grade.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03.1-03-09. Absorption trenches.**

1. **Design.** Absorption trenches shall be designed and constructed on the basis of the percolation test results or other soil data. Trench bottom area required is shown in the table in subsection 4. The bottom of the trench shall be dug so it is dead level throughout its length. The maximum depth to the bottom of absorption trenches may not exceed forty-eight inches [121.92 centimeters]. The trench bottom must be at least twenty-four inches [60.96 centimeters] above the mottled soil condition indicating a water table or from standing water in the borehole.
2. **Filter material.** The filter material shall cover the four-inch [10.16-centimeter] diameter pipe to a depth of two inches [3.08 centimeters] measured from the crown of the pipe and extend the full width of the trench and shall be not less than six inches [15.24 centimeters] deep beneath the bottom of the four-inch [10.16-centimeter] diameter pipe. The filter material may be washed rock or crushed stone ranging in size from one inch to three inches [2.54 centimeters to 7.62 centimeters]. The filter material shall be covered by red rosin paper, hay, straw, or approved filter fabric, as the laying of the pipe proceeds. Approved graveless systems may be used in lieu of rockfill providing an equivalent surface area of soil is utilized.
3. **Spacing.** Trenches must have a minimum spacing of undisturbed earth of six feet [1.83 meters] for eighteen-inch to twenty-four-inch [45.72-centimeter to 60.96-centimeter] trench widths and nine feet [2.74 meters] for trenches up to thirty-six inches [91.44 centimeters] wide.
4. **Absorption field.** The size and requirements for absorption fields shall conform to those given in the following table:

Table - Recommended absorption trench area.

Percolation Rate Minutes/Inch	Soil Classification	Depth of Rock Below Distribution Pipe			
		6"	12"	18"	24"
-Trench bottom area loading rate, gal/ft <sup>2</sup> /day					
.1 to 5	Sand	1.2	1.5	1.80	2.1
6 to 15	Sandy loam	0.8	1.0	1.20	1.4
16 to 30	Loam	0.6	0.75	0.90	1.05
31 to 45	Silt loam	0.5	0.63	0.76	0.89
46 to 60	Clay loam	0.45	0.57	0.68	0.79
-Square feet of trench bottom/bedroom <sup>1</sup>					
.1 to 5		125	100	85	70
6 to 15		190	150	125	110
16 to 30		250	200	165	145
31 to 45		300	240	200	170
46 to 60		330	265	220	190

<sup>1</sup>Based on sewage volume of 150/GPD/Bedroom

## 5. Absorption lines.

- a. Gravity distribution. Absorption lines shall be constructed of four-inch [10.16-centimeter] pipe. For approved plumbing materials, see table 14-1 of chapter 14 of the Uniform Plumbing Code.
- b. Pressure distribution. Absorption lines must be constructed of one and one-half-inch to two-inch [3.81-centimeter to 5.08-centimeter] rigid plastic pipe with one-fourth-inch [6.35-millimeter] holes drilled in the bottom of the pipes. The number of perforations and spacing of perforations for different diameter pipes for pressure distribution laterals must not exceed ten percent of the average pressure head on the perforations. The pipe and connections must be able to withstand a pressure of at least forty pounds per square inch. The perforated laterals should be attached to a two-inch [5.08-centimeter] manifold pipe and should have the ends capped. The laterals should be spaced no further than forty inches [101.6 centimeters] on center and no further than twenty inches [50.80 centimeters] from the edge of the rock. Pipe must be installed level and capped at the ends. The manifold must be supported and backfilled by hand.

6. **Grade.** The absorption trench bottom must be level.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-10. Piping material.** All piping from building drain to sewage treatment system shall be four inches [10.16 centimeters] or larger service schedule 40 acrylonitrile-butadiene-styrene or polyvinyl chloride plastic pipe, type PSP PVC sewer pipe SDR 35, and fittings A.S.T.M. D3033 or D3034, exclusive of the absorption lines, which shall be as in subsection 5 of section 62-03.1-03-09.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**62-03.1-03-11. Pumps and pump systems.** This section pertains to pumps installed after the septic tank. Sumps and ejectors installed before the septic tank must meet the requirements set forth in section 710.0 of the Uniform Plumbing Code.

**1. Pumping chambers.**

- a. The pumping chambers must be watertight and constructed of corrosion-resistant material.
- b. The working capacity of the pumping chamber must equal one-fourth of the daily sewage flow. Total capacity of the pumping chamber must equal or exceed daily sewage flow.
- c. A secure cover must be provided that is either bolted on or heavy enough to prevent unauthorized entry.
- d. An external electrical outlet must be provided for connection to the pump and control switches. Openings for wiring into the pump chamber must be sealed.
- e. No electrical splices or connections shall be located in the pump chamber or riser.

**2. Pumps.**

- a. Effluent lift pumps must be of cast bronze, cast iron, or plastic construction and must be designed for handling septic tank effluent. Pedestal sump pumps with an open motor are not allowed.
- b. Set the pump on a pedestal on the bottom of the pump chamber to minimize grit and solids entering the impeller.

- c. The pump must have maximum lift capability at least five feet [1.52 meters] greater than the actual elevation, plus pipe friction loss. A pump to a sewage mound ("Wisconsin mound") shall deliver seven and five-tenths gallons [28.38 liters] per minute for each one hundred square feet [9.29 square meters] of rock area.
- d. Outlet piping must be one and one-fourth inches [31.75 millimeters] in diameter or greater. The pipe must be laid below frostline or uniformly graded to drain back to the pump chamber. Volume of drain back should not exceed ten percent of the working capacity of the pump chamber. If piping is set to drain back, any check valves on the pump should be removed and a one-fourth-inch [6.35-millimeter] drainhole drilled on the low point of the outlet pipe. Piping connection to the pump must be with a union or quick disconnect coupling near the top of the pump chamber.

### 3. Pump controls.

- a. On-off switching for sewage pumps must be sealed mercury float switches or of a type approved by the administrative authority.
- b. Electrical connections must not be made in the pump chamber or pump chamber riser.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

### 62-03.1-03-12. Alternative systems.

1. **Mounds.** Mounds may be constructed on soils having a percolation rate faster than one hundred twenty minutes per inch [2.54 centimeters]. For soils slower than one hundred twenty minutes per inch [2.54 centimeters], either the system must be moved to more amenable soil or see subsection 2 on lagoons.
  - a. **Location.** Mounds may not be located on sites of greater than twelve percent slope. For moderately permeable soils, the administrative authority may approve construction on slopes over six percent. Mounds may not be built in areas where water may pond.
  - b. **Design.** The basal sand area of the mound must be sized on the basis of eighty-three hundredths gallons [3.12 liters] per square foot [0.09 square meter] per day. The basal sand may be twelve inches to twenty-four inches [30.48 centimeters to 60.96 centimeters] deep and must extend at

least five feet [1.52 meters] beyond the rock filter material in all directions. The rock layer may be twelve inches to twenty-four inches [30.48 centimeters to 60.96 centimeters] deep and may not exceed ten feet [3.05 meters] in width. Only pressure distribution may be used in the mound, so piping shall be one and one-half-inch to two-inch [38.10-millimeter to 50.80-millimeter] diameter rigid ABS or PVC. A one and one-fourth inch [31.75 millimeters] hole must be drilled every thirty-six inches [91.44 centimeters] and the ends of the lateral must be capped. A one-fourth inch [6.35 millimeters] hole shall be drilled in the top of the cap to serve as a siphon break. Laterals shall be spaced no further than forty inches [101.60 centimeters] on center and no further than twenty inches [50.80 centimeters] from the edge of the filter rock. Surface water must be diverted by a berm located uphill from the base of the mound.

- c. Specifications. Sand must be uniformly graded, with no more than fifteen percent fines. Filter rock must be one inch to three inches [25.40 millimeters to 76.20 millimeters] in diameter, washed or screened to less than ten percent fines.

A jar test should be used to determine sand suitability. In a one quart [.95 liters] jar, place two inches [50.8 millimeters] of the sand. Add water to three-fourths level, cap, shake, and set aside to settle. If a layer of silt is present on top which is more than one-eighth inch [3.18 millimeters] thick, the sand is not suitable for mound construction.

d. Construction.

- (1) Scarify the area with backhoe teeth or a cultivator. Do not remove topsoil. Bring outlet pipe from pump up into the center of the mound area.
- (2) Lay sand on scarified area. Do not compact the soil with machinery tires. Level sand to desired depth.
- (3) Lay filter rock down the center of the sand layer. Level.
- (4) Connect piping to manifold and lay pipe on rock. Cover pipe with rock and level by hand. Holes must be on bottom of the pipe.
- (5) Lay sand up to the top of the rock on all sides, sloping sand away at a three-to-one or four-to-one slope.

- (6) Cover rock with red rosin paper, hay, or filter fabric.
  - (7) Backfill entire mound to a three-to-one or four-to-one grade. Downhill side of mound on slopes must be backfilled at a four-to-one or longer grade. Cover mound with topsoil.
  - (8) Seed grass over mound. Trees and shrubs may be planted on the toe and up the sides of the mound, but do not plant shrubs or trees on top. If vegetation is not established before winter, cover mound with hay or straw to prevent freezing.
2. **Lagoons - Total containment.** In areas where normal septic systems will not function, and where the administrative authority finds that a nuisance will not be presented, a lagoon may be used for onsite sewage disposal.
- a. Design. Depth may not exceed five feet [1.52 meters], and side berms shall be graded to three-to-one for proper aeration. The site must be fenced, and the berms must be seeded. The berms must be at least one foot [0.30 meter] higher than the liquid level at design capacity. Inlet pipes must discharge onto a splash pad to minimize erosion. Outlet pipes may not be installed without the approval of the administrative authority.
  - b. Maintenance. Weeds must be controlled in the lagoon and on the berms to maximize aeration.
  - c. Prohibitions. Lagoons may not be constructed on sand, gravel, or light loamy soils. No lagoon may be discharged into receiving waters or onto the ground without the approval of the state department of health.
3. **Alternative design.** Alternate designs for construction of sewage treatment systems complying with the intent of this code may be submitted to the administrative authority for approval.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03.1-03-13. Chemical toilets.**

1. All requests for permission to erect and use chemical toilets shall be approved by the administrative authority.
2. Where approved by the administrative authority, chemical toilets shall be as follows:

A chemical toilet consists of a toilet seat connected by a metal hopper to a metal tank containing chemicals, usually sodium hydroxide. All connections to the toilet seat and the tank shall be watertight. A rod shall extend above the floor of the room to operate the agitator in the chemical tank.

3. A supply of the chemical shall be available in a closed container for periodic additions to the toilet.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03.1-03-14. Privies.**

1. All requests for permission to erect and use privies shall be approved by the administrative authority.
2. General specifications for the design and construction of a privy. A privy pit must be constructed by providing a watertight structure in the pit. The watertight structure shall provide a minimum capacity of sixty cubic feet [1.70 cubic meters]. A privy building shall be placed over the structure. The floor of this building shall be of wood or concrete with the privy seat of suitable material which is easily cleaned and serviceable. A vent located adjacent to the seat shall extend from the vault to a point above the roof of the building. The seat shall be provided with a cover which shall be self-closing.

All openings in the building shall be screened to prevent the entrance of flies. The building shall be so constructed so as to prevent the entrance of rats to the vault. The privy door shall be self-closing.

3. Removable cans. When removable cans are used in a privy, they shall be placed in watertight vaults and provision made for removing the seat so the cans can be moved for disposal of the contents in a manner acceptable to the administrative authority. The privy building shall comply with the above specifications for a pit privy building.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

#### **62-03.1-03-15. Septic tank pumpers.**

1. Every person engaged in the business of removing and disposing of the solid and liquid contents of private sewage treatment

systems shall obtain an annual license from the state department of health.

2. All solid and liquid contents of chemical toilets, septic tanks, pump chambers, and watertight pits for septic tank effluent shall be removed, when necessary, and disposed of in conformance with subsections 3 through 9.
3. Every pumper shall obtain a license to engage in such operations as specified in the appropriate rules of the state department of health, chapter 33-21-01.
4. A metal license tag with the number of the license issued shall be posted in a conspicuous place on the left side of the servicing unit.
5. Every vehicle used for pumping purposes shall be equipped with a watertight tank so that there will be no spillage on private premises or on highways or roads.
6. All portable receptacles used for transporting liquid or solid waste shall be watertight, equipped with tight-fitting lids, and cleaned daily.
7. All pumps and hose lines shall be maintained so as to prevent leakage.
8. All waste material shall be disposed of in such a place and in such a manner as will not constitute a nuisance or a menace to public health.
9. Waste material collected by a pumper shall not be discharged into ditches, watercourses, lakes, ponds, tidewater, or at any point where it can pollute any water supply, bathing area, or shellfish growing area. It shall not be deposited on the surface of the ground within one thousand feet [304.8 meters] of any residence or public road.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 43-18-09

**Law Implemented:** NDCC 43-18-09

**TITLE 67.1**

**Education Standards and Practices Board**



MARCH 2000

CHAPTER 67.1-01-01

**67.1-01-01-01. Organization of the education standards and practices board.**

1. **History.** The autonomous education standards and practices board was established by legislation in 1993. The board came into existence effective January 1, 1995, and assumed its duties on July 1, 1995. The board has its origins in the teacher professional practices commission which served in an advisory capacity to the superintendent of public instruction for teacher certification, teacher preparation program approval, and professional development.
2. **Board organization.** The education standards and practices board consists of nine members appointed by the governor. The board membership includes four classroom teachers from public schools, one classroom teacher from a private school, one school board member, two school administrators, and one dean of a college of education. The superintendent of public instruction or designee serves as an ex officio, nonvoting member. The administrator's professional practices board is a subset of the education standards and practices board which includes the two school administrator members, the school board member, and two teacher members selected by the full board. The term of office of the board members is three years, commencing on January first of the year of their appointment. Members may serve only two consecutive terms.
  - a. **Officers.** The officers are a chairperson, vice chairperson, and secretary, who will be the board executive director. The officers will be elected for

one-year terms at the reorganization meeting, which will be the first meeting called following July first of each year.

- (1) The duties of the chairperson include:
  - (a) Recognize members, state motions, and confine debate to the motion under discussion;
  - (b) Call for special meetings upon the request of a majority of the board in writing;
  - (c) Assist the director in preparing an agenda to be sent with the announcement of the next meeting;
  - (d) Designate board members to attend special meetings at board expense;
  - (e) Appoint standing committees and subcommittees;
  - (f) Be responsible for communicating all statements on the actions of the board in the execution of its duties; and
  - (g) Perform other duties as deemed necessary by the board.
  
- (2) The duties of the vice chairperson include:
  - (a) Preside when the chairperson is absent or when called to the chair by the chairperson;
  - (b) Perform the duties of the chairperson until a new chairperson is elected in case of a vacancy in the office of the chairperson;
  - (c) Be acquainted with the duties and responsibilities of the chairperson; and
  - (d) Perform other duties as deemed necessary by the board.
  
- (3) The duties of the executive director include:
  - (a) Record attendance of the board members;
  - (b) Keep an accurate record of all proceedings and distribute them to the members;
  - (c) Assist the chairperson in the preparation and distribution of the agenda;

- (d) Notify all board members ten days in advance of any meeting;
  - (e) Send out all mailings and notices required by the board;
  - (f) Prepare a financial statement for each regular meeting and coordinate vouchers;
  - (g) Release statements to the media, subject to board approval; and
  - (h) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.
- b. Board members. Board members will have regular and functional attendance at all regular meetings. The ~~chairman~~ chairperson will recommend to the governor that board members missing three consecutive meetings be replaced. Board members will send any materials for inclusion in mailings to the ~~chairman~~ chairperson and director. Members will prepare input for each regular meeting. They will file a written report with the director after attending any subcommittee meetings.
3. **Meetings.** The education standards and practices board shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days' prior notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend. Meetings will be conducted according to Robert's rules of order.
4. **Contact information.** ~~Certification~~ Licensure application packets and additional information about the rules of ~~certification~~ licensure of the education standards and practices board may be obtained by writing or calling:

Education Standards and Practices Board  
600 East Boulevard Avenue, Dept. 202  
Bismarck, ND 58505-0080  
Phone: 701-328-2264  
Fax: 701-328-2815

Requests for initial application packets should be made in writing and accompanied by the twenty-five dollar initial application packet fee.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-38-17, 28-32-02.1

**Law Implemented:** NDCC 15-38-17

**67.1-01-01-02. Duties of the education standards and practices board.**

1. **Standards for professional ethics, performance, and practices.** The board continuously reviews the North Dakota educator's code of ethics and rules, standards, and procedures pertaining to ~~certification~~ licensure, teacher education program approval, and professional development of educators. As part of the education standards and practices board, the board will solicit input from the teaching profession and representatives of school administrators, school board members, teacher educator professors, and other interested citizens. The board will be responsible for the interpretation of the North Dakota educator's code of ethics with requests for interpretation being placed in writing.
2. **Consideration of written complaints relative to code violations.** Requests for an inquiry against any North Dakota ~~certified~~ licensed educator from any interested citizen will be heard by the board. The inquiry must be requested in writing. Any educator named in an inquiry will be notified and will be informed of the procedures that will be taken.
3. **Board-initiated complaints.** The education standards and practices board may initiate proceedings against any North Dakota ~~certified~~ licensed educator for cause as stated in North Dakota Century Code section 15-36-15 or for violations of the educator's code of ethics.
4. **Complaint process.** A complaint by a citizen against a teacher or administrator is made by submitting a request for inquiry form to the office of the education standards and practices board.
  - a. A patron, a professional, or a district representative may obtain the request for inquiry forms and procedural guidelines from the office of the education standards and practices board.
  - b. The formal complaint process will begin when the requesting party returns the completed request for inquiry form to the secretary of the education standards and practices board. The form must be signed by the

complainant. Supporting documentation may be included as indicated in the procedural guidelines.

- c. The education standards and practices board secretary, upon receipt of the request for inquiry form, shall transmit a copy with the supporting documentation to the affected educator by certified mail.
- d. The affected educator may submit a clear and concise answer to the complaint within twenty calendar days from the day the certified mail is delivered. The answer must be sent to the secretary of the education standards and practices board and may include supporting documentation. If the affected educator fails to file an answer, the allegations in the complaint will be deemed admitted and the board shall proceed to a hearing pursuant to North Dakota Century Code section 15-36-16.
- e. Upon receipt of the response from the affected educator, or passage of the deadline for a response, the education standards and practices board secretary will place the request for inquiry on the agenda of the next meeting of the education standards and practices board or administrator's professional practices board for preliminary discussion.
- f. At the education standards and practices board meeting, the education standards and practices board or administrator's professional practices board will review the written documents presented. No testimony will be heard at this time. Based upon the paper review, the board will determine the following:
  - (1) To dismiss the case.
  - (2) To seek additional information.
  - (3) To issue a warning or reprimand, or both.
  - (4) To initiate formal disciplinary action.
- g. If the application for licensure is denied, or if the board determines to initiate formal disciplinary action that may result in suspension, revocation, or other appropriate disciplinary action, the applicant may request, in writing, a hearing. The hearing will be conducted according to the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32. Parties may be represented and provide testimony at the administrative hearing.

h. Denial and revocation of an educator's professional license for convictions of crimes against children or sexual offenses:

- (1) Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching license and the education standards and practices board or administrator's professional practices board shall revoke immediately the teaching license of an individual who has been found guilty of a crime against a child or a sexual offense.
- (2) An individual who is denied an educator's professional license or who has had a license revoked under this section may file a request with the education standards and practices board office for a due process hearing in accordance with this section and the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.
- (3) The education standards and practices board may impose a fee against a licenseholder to reimburse the education standards and practices board for all or part of the costs of the administrative actions that result in disciplinary action against the licenseholder under this section.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-15, 15-38-17, 15-38-19, 28-32-02.1

**Law Implemented:** NDCC 15-38-18, 26-32-02.1

67.1-01-01-03. Fine for practicing without a license. The education standards and practices board may impose a fine against any individual without a valid license who is under contract in any position requiring a valid professional educator's license.

1. The fine imposed will be fifty dollars per day the individual practices without a valid license, up to a total fine of one thousand dollars.
2. The effective date of the fine will be the first day after the educator's license has expired or the first day practicing before obtaining a valid license.
3. The educator will have five days after notification from the board to submit to the education standards and practices board all required information for license renewal before additional disciplinary action will be taken.

4. The fine must be paid by the educator prior to receiving the educator's initial or renewed license.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 15-36-15, 15-38-17, 28-32-02.1

**Law Implemented:** NDCC 15-38-18, 28-32-02.1

## CHAPTER 67.1-02-01

**67.1-02-01-01. Student teachers.** A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education must have classroom-related preprofessional experience prior to student teaching. This experience must be provided as early as possible. Formal admittance to the teacher education program includes meeting appropriate state program approval requirements.
2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for ten consecutive weeks with exceptions documented through program approval. The student teacher must be placed in a classroom where the cooperating teacher is regularly assigned. Additional student teaching experiences shall be determined by the training institution.
3. In the event of an emergency, the student teacher may once during the student teaching semester be placed as a substitute in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days.
4. Student teachers may be placed only in accredited schools.
5. Teaching experience cannot be used for a waiver of student teaching, except as specified in subdivision d of subsection 1 of section 67.1-02-02-02.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-47-41, 15-47-42

**67.1-02-01-02. Cooperating teachers.** A cooperating teacher is the teacher in the local situation who works with, helps, and advises the student teacher.

1. Every cooperating teacher must have acquired a minimum of two semester hours or three quarter hours in a supervision of a student teaching course or an inservice requirement that meets the necessary essentials in preparing cooperating teachers to supervise student teachers. Those cooperating teachers who have served prior to July 1, 1976, may have this requirement waived at the discretion of the host college and cooperating school.

2. The cooperating teacher must have at least two years of teaching experience. The cooperating teacher must have at least one year of teaching experience in the school system in which the student teacher is being supervised.
3. Before being accepted and approved as a cooperating teacher, the teacher must be recommended by the administration of the school in which student teaching is performed.
4. A cooperating teacher who cannot recommend a student teacher for teaching or certification licensure shall have a conference with the college supervisor and the student teacher prior to the student teaching evaluation and recommendation.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-38-18, 15-47-41

**67.1-02-01-04. Program approval of teacher education for certification licensure.** The education standards and practices board shall set procedures for and implement a system of program approval for teacher education programs for state certification licensure of educators.

1. The education standards and practices board may enter into approval agreements with national accrediting agencies.
2. The procedures for program approval must be reviewed and revised at least every five years with input from state-approved institutions. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32.
3. New procedures become mandatory two years after their adoption by the education standards and practices board.
4. The education standards and practices board shall gather information through the program approval process to determine whether institutions and individual preparation programs meet the North Dakota standards for the preparation of educators for state licensure. The board shall issue decisions of approval, approval with stipulations to be met, approval with probation, or denial or revocation of approval.
5. Full text of the North Dakota procedures for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-38-18

**67.1-02-01-05. Program approval standards.** The education standards and practices board shall adopt a set of North Dakota teacher education program approval standards.

1. The standards will be the criteria used to evaluate undergraduate and graduate education programs leading to North Dakota educational licensure.
2. The standards must be reviewed and revised at least every five years with input from the state-approved institutions and K-12 educators and with consideration of recommendations from professional organizations. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32.
3. New standards become mandatory two years after their adoption by the education standards and practices board.
4. Full text of the North Dakota standards for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.
5. Graduates successfully completing all the requirements of programs approved by the education standards and practices board must be recommended by their degree granting institution for North Dakota ~~certification~~ licensure on that basis. Graduates of programs other than those approved by the North Dakota education standards and practices board are subject to meeting the same standards criteria through the review of official transcripts.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-38-18

## CHAPTER 67.1-02-02

### 67.1-02-02-02. Entrance-certificates Initial licenses.

1. Initial teacher certification licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval paraphrased-below:
  - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
  - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific K-12 kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level.
    - (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area.
    - (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas, and special methods of teaching at the middle level. Study of these areas must total a minimum of ten semester hours with at least two semester hours of special methods of teaching at the middle level.
    - (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts.

- (4) Grade--levels--K-12 Kindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of grade-levels-K-12 kindergarten through grade twelve and special methods of teaching in the specific content area.
- (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.

~~The--applicant--must--have--a--minimum--overall--grade--point--average--of--2.50--and--provide--three--positive--recommendations--from--the--institution.~~

- d. Student teaching exception. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of the education standards and practices board and North Dakota Century Code sections 15-47-46 and 15-41-25, except the requirement of ten weeks of student teaching.
- (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document

five years of successful teaching within the last ten years; or

(2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.

(a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.

(b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.

(c) The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.

2. An out-of-state graduate must hold a minimum of a bachelor's degree from a state-approved teacher education institution. The approved program must include a general studies component; a North Dakota recognized program area major; and a professional pedagogy core as defined in the North Dakota standards for teacher education program approval paraphrased below:

a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.

b. North Dakota recognized program area majors are printed on the application form and include content specific majors at the secondary level, content specific K-12 majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher

education--program-approval-to-determine-whether-they-meet-the-same-riteria-as-the-listed-recognized-majors.--Majors-must-include-a-minimum-of-thirty-two-semester-hours-of-coursework-specific-to-the-major-beyond-the-introductory-level.

(1)--The-secondary-content-specific-major-must-include-a-minimum-of-four-semester-hours-in-special-methods-of-teaching-at-the-secondary-level-and-special-methods-of-teaching-in-the-specific-content-area.

(2)--The-middle-level-major-must-include-study-of-middle-level-foundations,-adolescent-development,-reading-in-the-content-areas,-and-special-methods-of-teaching-at-the-middle-level.--Study-of-these-areas-must-total-a-minimum-of-ten-semester-hours-with-at-least-two-semester-hours-of-special-methods-of-teaching-at-the-middle-level.

(3)--The-elementary-major-must-include-special-methods-of-teaching-elementary-content-areas-with-a-minimum-of-twelve-semester-hours-specific-to-teaching-elementary-school-math,-science,-social-studies,-reading,-and-language-arts.

(4)--Grade-levels-K-12-preparation-programs-in-special-education,-foreign-language,-art,-music,-physical-education,-business-education,-and-computer-education-must-include-a-minimum-of-four-semester-hours-of-special-methods-of-teaching-inclusive-of-grade-levels-K-12-and-special-methods-of-teaching-in-the-specific-content-area.

e.--The-professional-education-component-includes-a-minimum-of-twenty-two-semester-hours-of-pedagogical-study-of-teaching-and-learning-in-addition-to-the-program-specific-major. This-coursework-must-be-from-the-areas-of-educational-foundations,-educational-psychology,-child-development,teaching-and-learning-theory,-educational-diagnosis-and-assessment,-inclusive-education,-educational-technology, classroom-and-behavioral-management,-and-human-relations-specific-to-teaching.---The-professional-education-component-must-also-include-classroom-professional-experience-prior-to-student-teaching-and-a-minimum-of-ten-weeks-of-full-time-successful-participation-in-student-teaching-at-appropriate-grade-levels-under-the-supervision-of-a-state-approved-teacher-training-institution.

3. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is on the transcript. If the student has transferred from another institution, and the grade point

average calculated by the institution granting the degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.

- 4- 3. An applicant shall provide three positive recommendations. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
- 5- 4. Verification of eligibility for home state certification licensure may be requested.
- 6- 5. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
- 7- 6. An application fee of twenty-five dollars must accompany a request for an initial application form.
- 8- 7. A fee of sixty dollars must accompany the application for initial certification licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the certification licensure application.
- 9- 8. All initial certificates licenses are valid for only two consecutive school years.
- 10- 9. An In addition to completing the licensure application process outlined in this section, an applicant applying for certification licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15-38-18.2.
  - a. An in-state applicant graduating from a North Dakota teacher preparation program shall obtain two fingerprint cards, the return envelope, and the criminal record inquiry form from college officials at the beginning of the semester in which the person will graduate. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education

standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.

- b. An-out-of-state-applicant-or-an-in-state-applicant-who-has previously-graduated-from-a-North-Dakota-institution without-seeking-teacher-certification-shall-request-the initial-certification-packet-containing-two-fingerprint cards,-the-return-envelope,-and-a-criminal-record-inquiry form-from-the-education-standards-and-practices-board. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, or campus police. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.
- c. The-applicant-must-take-the-two-fingerprint-cards-to-a sheriff's-office,-a-police-department,-or-campus-police for-the-fingerprinting.-Both-cards-must-be-completed-with a-ten-finger-check.-The-cards-must-not-be-folded,-bent, or-altered-in-any-way. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
- d. The-applicant-must-provide-all-information-on-the fingerprint-cards-and-the-criminal-record-inquiry-form including-an-original-signature.-Every-space-must-be filled-in,-either-with-the-appropriate-information,-or with-NA-if-the-category-of-information-does-not-apply-(for instance,-military-service). The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.
- e. The-fingerprinting-agency-shall-put-the-fingerprint-cards and-the-criminal-record-inquiry-form-into-the-return envelope-provided-in-the-packet,-along-with-the applicant's-check-for-forty-two-dollars-made-out-to-the education-standards-and-practices-board.-The-education standards-and-practices-board-will-forward-payment-to-the bureau-of-criminal-investigation-and-the-federal-bureau-of investigation.-The-envelope-should-be-mailed-directly-to the-Education-Standards-and-Practices-Board,-State Capitol,-9th-Floor,-600-East-Boulevard-Avenue,-Bismarck, ND,-58505-0080. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final

completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.

f. The applicant is responsible for any local processing fees charged by the fingerprinting agent and the mailing fees. Fingerprint screening reports must be recent and may only be used for licensure for six months from the date the report is received by the education standards and practices board.

g. The applicant is also responsible for filling out and sending in the certification application form and providing official transcripts in a timely manner. The federal bureau of investigation check may take six weeks or more for processing, and a minimum of three weeks must be allowed for processing the application form. The applicant should allow sufficient time for the fingerprint check and the certification process completion before accepting any teaching position. North Dakota Century Code section 15-36-11 requires a current North Dakota teaching certificate for employment.

**History:** Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 15-36-18, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-36-08, 15-38-18, 15-38-18.2, 15-47-52

**67.1-02-02-03. Distance learning instructor - Definition - Qualifications - Certification Licensure.**

1. "Distance learning instructor" means an out-of-state teacher who conducts a class that is broadcast or delivered to a location in North Dakota from outside North Dakota by any form of electronic transmission, including fiber optic cable, satellite, television, computer, telephone, or microwave.
2. Every distance learning instructor seen or heard in North Dakota must hold a valid North Dakota teaching certificate license issued by the education standards and practices board. A distance learning instructor shall obtain such a certificate license by providing to the education standards and practices board:
  - a. A certified copy of a current teaching certificate license issued by the state of broadcast origin; and
  - b. Certification Verification that the distance learning instructor meets that state's regular certification or licensure standards in the subject area taught via electronic transmission.

3. A North Dakota teaching ~~certificate~~ license issued pursuant to this section only allows a distance learning instructor to teach in North Dakota via electronic transmission from outside this state. If a teacher desires to teach in North Dakota while being physically present in North Dakota, the teacher must obtain a teaching ~~certificate~~ license pursuant to this section.
4. A North Dakota teaching ~~certificate~~ license issued pursuant to this section has an application fee of twenty-five dollars, a ~~certification~~ licensure fee of sixty dollars, an out-of-state review fee of one hundred seventy-five dollars and is valid for two years.

**History:** Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-02-04. Two-year and five-year renewals.**

1. a. A two-year ~~certificate~~ license renewal will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who meet the renewal requirements and pay the required fees.
- b. A two-year ~~certificate~~ license renewal will be issued to an applicant reentering the profession after an absence of five years. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry ~~certificate~~ license is ~~fifty~~ sixty dollars.
- c. A two-year ~~certificate~~ license renewal will be issued to an initial applicant from out-of-state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out-of-state. Such an applicant must meet the requirements of North Dakota initial ~~certification~~ licensure as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section 67.1-02-02-09. The fee for the reentry ~~certificate~~ license is ~~fifty~~ sixty dollars.
- d. A two-year certificate renewal will be issued to ~~a substitute-teacher for substitute teaching.~~ A substitute teacher must maintain a valid teaching ~~certificate~~ license using the two-year renewal cycle, but is not required to

submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is thirty forty dollars.

2. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota certificate license. All five-year certification license applications must be accompanied by a fee of one hundred dollars. Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status. Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
  - a. Renewal--applicants A renewal applicant who have has completed the four semester hours of credit but have has not been contracted for at least thirty days under the five-year certificate license will revert to the two-year renewal cycle.
  - b. A renewal applicant who has failed to complete the four semester hours of reeducation credit (, whether the applicant has been contracted or not), will either not be renewed, or may agree to be placed on two-year probation. Eight semester hours of reeducation credit must be supplied as a condition of the two-year probationary certificate license, four semester hours the first year and four semester hours the second year. An applicant who is employed under contract during the probationary certificate license and fails to complete the probation credit requirements will not be renewed. An applicant who is not employed under contract at any time under the probationary certificate license may renew on the two-year cycle and may substitute teach, but must begin completing the reeducation requirements immediately if the applicant accepts a full-time or part-time contract.
  - c. If recommendations are not adequate to issue a five-year certificate license, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. The procedure must be as provided in North Dakota Century Code section 28-32-05. Following the hearing procedure, the education standards and practices board shall make a determination whether to

issue a renewal to the applicant or deny recertification  
relicensure.

**History:** Effective July 1, 1995; amended effective October 1, 1998;  
October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-36-08, 15-38-18

**67.1-02-02-05. Professional development for certificate license renewal.** The succeeding renewal of the five-year certificate license requires verification of a minimum of four semester hours or six quarter hours of college or university credit earned within the dates of the certificate license, contracted teaching of a minimum of thirty days, and three recommendations as outlined in subsection 2 of section 67.1-02-02-04. Applicants not meeting these requirements will be processed as indicated under that section. Professional development coursework submitted for renewal may be either undergraduate or graduate credit and must be either in professional education or applicable to the applicant's certified licensed major, minor, or endorsement areas. Applicants who are working toward an added degree or endorsement may use coursework applicable to that expanded area of study for renewal.

**History:** Effective July 1, 1995; amended effective October 1, 1998;  
March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-02-06. Denial and appeal.** The education standards and practices board may deny an application for the issuance of a certification license made by an applicant:

1. Who failed to comply with certification licensure statutes or the educator's code of ethics;
2. Who failed to meet the minimum educational requirements set forth in the rules of certification licensure of the education standards and practices board;
3. Who failed to submit appropriate recommendations;
4. Who has been convicted of a crime under the laws of the state or the United States, or who has knowingly provided false information to the education standards and practices board;
5. Who is currently under license suspension; or
6. Who has had certification or licensure revoked.

If the--application--for--the--issuance--of--certification a license application is denied by the education standards and practices board staff, an applicant may request, in writing, a review of the denial by

the education standards and practices board through written documentation. In the event of denial by the education standards and practices board, the applicant may request a public hearing of the matter under North Dakota Century Code chapter 28-32.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 15-38-18, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-02-07. Indian studies.** Any teacher who graduated from a teacher education program after September 1, 1980, is required to meet the North Dakota Native American studies requirement which is two semester hours or three quarter hours of college credit in North Dakota Native American studies, or the equivalent in inservice pursuant to approval by the education standards and practices board. The two-year certificate license will be used for compliance for reentry and out-of-state applicants. Substitute teachers are exempt from the Indian studies requirement until a contracted position is accepted. The course must be completed within the time period of the first two-year certificate license under which the educator becomes contracted in North Dakota. If this requirement is not met, the certificate license may not be renewed until the course is completed.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-02-08. State model for inservice education and staff professional development.** The education standards and practices board shall adopt a model for inservice education and staff professional development. The model must include the assessment of statewide and staff professional development needs, a projection of programs responsive to those needs, and the identification of the resources needed to implement those programs.

**History:** Effective July 1, 1995; amended effective March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-02-09. Reentry.** An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit in the area in which the teacher wishes to renew certification licensure during the first two years of reentry contracted service. One-half of the required credit hours must be earned before entering the second year of employment. Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position. The fee for the two-year reentry certificate license is sixty dollars.

Reentry applicants should also refer to information in subsection 1 of section 67.1-02-02-04, regarding two-year and five-year renewals.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 15-36-18, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-02-10. Substitute teachers.**

1. **Qualifications.** A substitute teacher must hold a valid North Dakota ~~educators'~~ educator's professional certificate license based upon the same qualifications as a contracted teacher. A substitute teacher holding a regular certificates license may substitute in any area requiring regular elementary or secondary certification licensure. An individual with a restricted certification license may substitute only in the individual's area of restriction.
2. **Reeducation.** A substitute teacher who has not been under contract at any time during the person's current certificate license does not need to submit reeducation hours to renew certification licensure. A substitute teacher who has been under part-time or full-time contract at any time during the person's current certificate license, or who enters into a contract, must meet the reeducation requirements for contracted teachers.
3. **Shortages.** Interim certification licensure may be granted for substitute teachers as detailed in section 67.1-02-04-02 when a shortage of regularly certified licensed substitutes exists.

**History:** Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

## CHAPTER 67.1-02-03

**67.1-02-03-01. Elementary endorsement.** Reeducation of a certified licensed teacher for elementary school teaching may be accomplished by completing a college-approved elementary teacher education program of twenty-six semester hours or forty quarter hours including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between grades kindergarten through grade six. The coursework must ~~contain the elementary methods~~ include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework. Reeducation for the elementary endorsement must be completed prior to or within two years of assignment to teach at the elementary level.

A verified successful college-supervised internship with credit may be substituted for student teaching under this section. The internship option within the elementary endorsement is available only:

1. To an individual who has graduated from a state-approved teacher education program that has as part of its approved preparation a year of college-supervised internship at the elementary level; or
2. To an individual certified licensed by the North Dakota education standards and practices board to teach K-12 kindergarten through grade twelve in accordance with North Dakota Century Code sections 15-41-25 and 15-47-46 who has already successfully completed a minimum of five weeks of full-time student teaching at the elementary level in the individual's specialty area. The total internship ~~contact~~ contact hours in the classroom must be equivalent to a minimum of five weeks of full-time student teaching and consist of classroom time blocks not less than one-half of one day.

The internship must occur in a regular grade-K-6 kindergarten through grade six classroom setting and allow the intern to experience the full range of curriculum and classroom operations. Individuals performing elementary endorsement internships work under the supervision of certified licensed teachers and must not be assigned in lieu of regularly employed teachers. Individuals completing the internship option who are doing so to meet the requirements for elementary principalship must not intern with classroom teachers they would be supervising or evaluating in their role as principal. The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.

**History:** Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-47-46

**67.1-02-03-02. Kindergarten endorsement.** Reeducation of elementary teachers for kindergarten schoolteaching may be accomplished by presenting a minimum of eight semester hours or twelve quarter hours of kindergarten coursework in curriculum, methods, materials, skills, and activities for the kindergarten child. The applicant must have a minimum of one year full-time equivalent successful teaching experience in grades kindergarten or grade one; or student teaching of four semester hours or six quarter hours or a minimum of five consecutive weeks applicable to the endorsed area. Reeducation for the kindergarten endorsement must be completed prior to or within two years of assignment to teach at the kindergarten level.

**History:** Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-47-46

**67.1-02-03-03. Secondary endorsement.** Reeducation for secondary schoolteaching may be accomplished in one of the following two ways:

1. By completing the minimum requirements for a degree in secondary education including student teaching in grades seven through twelve and a North Dakota recognized content area major; or
2. ~~Individuals~~ An individual who already ~~have~~ has a North Dakota recognized content area major may complete the secondary endorsement by presenting a minimum of eight semester hours or twelve quarter hours of secondary education professional courses for the endorsement in addition to the major or minor field. The applicant must have a minimum of one year successful teaching experience in grades seven through twelve or have supervised student teaching as part of the above program.

Reeducation for the secondary endorsement must be completed prior to assignment to teach in the secondary content area.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-41-25

**67.1-02-03-04. Middle school endorsement for grades five through eight.** ~~Endorsement for teaching in a middle school is available on a voluntary basis to teachers certified to teach at the elementary or grades one through twelve levels. The middle school endorsement is mandatory for teachers certified for grades seven through twelve to~~

~~qualify for work with grades five and six in the subject fields of their certification--and--voluntary--for work with students in grade seven and eight.~~ The middle school endorsement is mandatory for teachers licensed for grades seven through twelve to qualify for work with grades five and six in the subject fields of their licensure and voluntary for work with students in grades seven and eight. Elementary teachers licensed to teach grades one through six must complete the middle school endorsement to teach in grades seven and eight. Endorsement for teaching in middle school is available on a voluntary basis to teachers licensed to teach elementary grades one through eight or to specialty areas licensed to teach grades one through twelve under paragraph 1, 3, or 4 of subdivision b of subsection 1 of section 67.1-02-02-02. A review of past coursework will be conducted and a program of studies needed for completion will be established. The middle school endorsement requires a minimum of ten semester hours including all of the following:

1. Development of young adolescents.
2. Philosophy and curriculum (foundations) of middle school education.
3. Reading in the content areas.
4. Methods or strategies of teaching in the middle grades (two semester hours minimum).

Reeducation for the middle school endorsement must be completed prior to or within two years of assignment to teach at the middle level, grades five through eight.

**History:** Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-47-46

**67.1-02-03-05. Bilingual education or English as a second language endorsement.** Reeducation for a "bilingual education or English as a second language" endorsement for any ~~certified~~ licensed teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the following areas:

1. **Foundations.** Four semester hours or six quarter hours of college coursework including the following:
  - a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States, and different instructional methods to use with different ethnic and language groups.
  - b. Foundations of bilingual education, which involves models of bilingual education; research on the effectiveness, or lack thereof, of bilingual education; history of bilingual

education; and significant laws and court decisions affecting language minority students.

2. **Linguistics.** Six semester or nine quarter hours of college coursework including the following areas:
  - a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, and semantics), principles of language change, and development of language families.
  - b. Psycholinguistics, which involves first and second language, oral and written acquisition processes, and learning theories.
  - c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.
3. **Methods.** Two semester or three quarter hours of college coursework including the following:
  - a. Methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as a second language, from the grammar-translation method to the natural method.
  - b. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.
4. **Assessment.** Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.
5. **Field experience.** Two semester or three quarter hours of college coursework in field teaching experience with limited English proficient students in a bilingual or English as a second language setting.

Reeducation for the bilingual education or English as a second language endorsement must be completed prior to assignment to teach bilingual education or English as a second language.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

67.1-02-03-06. Minor equivalency endorsement.

1. Nothing in this section may be interpreted to affect the validity of minor equivalencies issued by the department of public instruction prior to September 1, 1998.
2. The applicant wishing to apply under the minor equivalency endorsement option must be licensed by the education standards and practices board to teach under North Dakota Century Code section 15-47-46 or 15-41-25. The minor equivalency endorsement will be issued for the same grade levels as the individual's primary licensure, the same as for minors transcribed by colleges of teacher education. Those whose primary licensure is secondary may use the endorsement to teach the new content area in grades seven through twelve. Those whose primary licensure is elementary (grades one through six or one through eight) or middle school (grades five through eight) may use the endorsement for additional content expertise at those levels but may not use it to teach at the high school level without a complete secondary endorsement.
3. The applicant must request a minor equivalency endorsement form from the education standards and practices board, complete it, and return it to the education standards and practices board with official transcripts and the review fee of fifty dollars.
4. Once the transcripts have been reviewed, if all requirements have been met, the minor equivalency endorsement will be added to the teaching license. A new teaching license will be issued.
5. If the requirements have not been met, the education standards and practices board will return the minor equivalency endorsement form listing the additional requirements to be completed. No additional fee will be charged when the requirements have been met and the minor equivalency endorsement is added to the teaching license.
6. Two levels of content area endorsements are available to be added to the existing North Dakota professional educator's license. A listing of all the minor equivalency endorsement content areas available and specific areas of study required within each equivalency can be obtained by contacting the office of the education standards and practices board.
  - a. The ME16 level requires a minimum of sixteen semester hours of content-specific coursework including the areas of study approved and required by the education standards and practices board.

- b. The ME24 level requires a minimum of twenty-four semester hours of content-specific coursework including the areas of study approved and required by the education standards and practices board. The ME24 also must include the special methods of teaching in the content area. The ME24 is considered equivalent to a full teaching minor.
7. All coursework for the minor equivalency endorsement must be beyond the introductory level general studies courses as defined in section 67.1-02-02-02 and be transcribed by an approved teacher education program.
8. All coursework must be transcribed by a state-approved college of teacher education program.
9. The minor equivalency endorsement must be completed prior to contracted teaching in the content area.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01, 15-41-25

## CHAPTER 67.1-02-04

67.1-02-04-01. Interim certificates licenses. Interim certificates licenses will be issued under the following conditions:

1. Consideration for interim certificates licenses will not be granted until after August fifteenth in any year.
2. Interim certificates licenses may be issued only in areas where documented shortages of regularly certified licensed teachers exist as determined by the education standards and practices board. Shortage areas must be determined by the education standards and practices board based upon the ratio of regularly certified licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting interim certification licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly certified licensed teachers.
3. The request for an interim certificate license must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an interim certificate license, indicating intent to offer a contract if certification licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly certified licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.
4. The candidate must write a letter indicating willingness to accept the position if offered.
5. Complete official transcripts of all college work must be sent to the education standards and practices board.
6. The applicant must have proficiency and hold ~~minimal~~ minimum qualifications of a content area bachelor's degree in the content area to be assigned. If an applicant already qualifies for teacher certification licensure in another content area, interim certification licensure may not be used

to teach in a new content area while obtaining new content area requirements.

7. Renewal of interim certificates licenses will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a certified licensed person for the position.
8. Renewal of the interim certificate license, if permitted, is contingent upon presentation of at least eight semester hours or twelve quarter hours of additional college credit toward completion of the requirements for regular certification licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
9. The fee for the interim certificate license is one hundred dollars for each year the certificate license is issued.
10. Interim certification licensure is to address documented shortage areas only. Interim certification licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular certification licensure renewal.
11. Initial applicants for interim certification licensure must also submit to the fingerprint background check as stated in subsection 10 of section 67.1-02-02-02.
12. Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an interim license may apply for a regular two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

**History:** Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 15-36-08, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-04-02. Interim certificates licenses for substitute teachers.** Interim certification licensure may be granted for substitute teachers who meet the initial requirements as outlined in subsections 1 through 6 and subsection 10 of section 67.1-02-04-01 when a shortage of regularly certified licensed substitutes exists. The interim certificate license fee for substitute teachers is thirty dollars for one year. Renewal is contingent upon continued request from the school employing the substitute. Individuals who hold an interim substitute certification licensure and wish to accept a full-time or part-time contract must do so under the reentry requirements in sections 67.1-02-02-04 and 67.1-02-02-09, including reeducation hours.

**History:** Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 15-36-08, 28-32-02

**Law Implemented:** NDCC 15-36-01

67.1-02-04-03. Interim school counselor. School counselor monitoring under the seven-year option provided in North Dakota Century Code section 15-36-18, which took effect August 1, 1997, will be conducted as follows:

1. An applicant wishing to apply under the seven-year option provided in North Dakota Century Code section 15-36-18 must first contact the guidance and counseling office at the department of public instruction to confirm that the counseling degree the applicant currently holds is eligible. The department of public instruction counseling office will forward a letter confirming its decision to the education standards and practices board.
2. Eligible counselors entering through the seven-year program must be fingerprinted at the beginning of the process and clear the background check under section 67.1-02-02-02 in the same manner as other initial licensure applicants.
3. An applicant must show documentation that the applicant has been formally admitted both:
  - a. To a college or university with a state-approved teacher education program; and
  - b. To the approved teacher education program at that institution.
4. Once formally admitted, an applicant must file with the education standards and practices board:
  - a. The applicant's approved teacher education program plan; and
  - b. A timeline showing how the applicant will complete at least one-seventh of that program each year.
5. A counselor entering through the seven-year option must complete the requirements within seven years of the counselor's first entrance into the program. A counselor in this program must submit an annual progress report to the education standards and practices board with transcripts verifying that the counselor has completed the agreed-upon one-seventh of the program requirements.
6. An applicant entering under the seven-year program must receive a letter of approval granting the applicant permission

for employment while working toward full licensure and must make a satisfactory annual progress report to the education standards and practices board.

7. An applicant cannot be employed or permitted to perform the duties of a licensed school counselor until the education standards and practices board formally approves the applicant's program and timeline and issues the letter.
8. Individuals performing the duties of a school counselor under an education standards and practices board letter of approval must be under the supervision of a licensed teacher since they do not yet hold a regular teaching license.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 15-36-01

**Law Implemented:** NDCC 15-36-18

67.1-02-04-04. Provisional licenses. Provisional licenses will be issued for a period of forty days under the following conditions:

1. Consideration for provisional licenses will not be granted until after August fifteenth in any year.
2. Provisional licenses can only be issued to those individuals who have met all of the other requirements for a license except for the final clearance of the bureau of criminal investigation and the federal bureau of investigation.
3. The school wishing to hire the individual has submitted to the education standards and practices board a letter of need and intent to hire.
4. The individual has submitted a letter to the education standards and practices board indicating no criminal background and the intent to accept the position.
5. The provisional license may be issued for forty days and may be renewed indefinitely at the discretion of the education standards and practices board and continued request of the school.
6. There is a one-time fee for the provisional license of twenty dollars.
7. Once the criminal background investigation has been completed, the education standards and practices board may issue the license for which the individual is qualified with its respective fees and conditions.

**History:** Effective March 1, 2000.

**General Authority:** NDCC 15-36-01

Law Implemented: NDCC 15-36-18

67.1-02-04-05. Interim reciprocal licensure. North Dakota has conditional reciprocity with other states. To receive interim reciprocal licensure, an applicant must first hold a valid, current regular teaching certificate or license from another state, province, or similar jurisdiction.

1. Interim reciprocal entrance requirements. Those who apply to the education standards and practices board, meet the minimum reciprocity requirements, and submit a satisfactory plan for completing the remaining North Dakota requirements will be issued a two-year interim reciprocal license which has a fee of sixty dollars. The minimum reciprocity qualifications are:
  - a. A bachelor's degree that includes a major that meets the issuing jurisdiction's requirements in elementary education, middle level education, or a content area taught in public high school;
  - b. Completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
  - c. Fingerprint background check as required of all initial applicants; and
  - d. Submission and education standards and practices board approval of a plan to complete all remaining requirements for full North Dakota licensure as stated in section 67.1-02-02-02.
2. Remaining North Dakota requirements. An applicant will be notified of remaining requirements for full North Dakota licensure by the education standards and practices board. All out-of-state applicants shall submit transcripts for review by the same criteria as North Dakota applicants. The applicant must provide official copies of transcripts from all the institutions of higher education the applicant has attended. The nonrefundable fee for the transcript review process is one hundred seventy-five dollars.
3. Renewals. The interim reciprocal license is renewable once, provided adequate progress toward completing the remaining requirements is documented and approved by the education standards and practices board. Individuals who are only substituting may hold and renew the interim reciprocal license and defer the remaining requirements until they come under part-time or full-time contract.

History: Effective March 1, 2000.  
General Authority: NDCC 15-36-01

Law Implemented: NDCC 15-36-18

CHAPTER 67.1-02-05-02

**67.1-02-05-02. Experience.** Teaching experience in approved kindergarten, elementary, middle level, secondary, and postsecondary teacher education programs and employment with the education standards and practices board, department of public instruction, or state board for vocational and technical education will be granted as experience for certificate license renewal.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-05-03. Reserve officers<sup>1</sup> officers training corps instructors.** Reserve officers<sup>1</sup> officers training corps instructors must submit verification to the education standards and practices board that they meet the military requirements for junior ROTC instructors, submit to the initial licensure background check, and pay all relevant fees. Individuals An individual meeting these requirements shall receive certification a license with a restriction to that area.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-05-04. Endorsements, added degrees, and restrictions.** The North Dakota educator's professional certificate license is issued as described in section 67.1-02-02-02. This certificate license qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. ~~The endorsements could be recently-acquired-college-granted-majors-or-minors or--a--new--degree;--endorsements--in--kindergarten;--elementary;--middle school;--bilingual;--secondary;--or--any--other--endorsement--issued--by--the education-standards-and-practices-board;--Added-degrees-and-endorsements must-be-obtained-through-state-approved-teacher-education--programs;---A one-time;--nonrefundable--review-fee-of-fifty-dollars-must-accompany-the request-to-add-an-endorsement.~~ Added degrees and endorsements must be obtained through state-approved teacher education programs.

1. Endorsements. An individual holding a valid North Dakota teaching license may request endorsements in kindergarten, elementary, middle school, bilingual, secondary, or content area minor equivalency endorsements or any other endorsement issued by the education standards and practices board. Specific requirements appear in chapter 67.1-02-03, regarding reeducation. A one-time, nonrefundable review fee of fifty dollars must accompany the request to add an endorsement.

2. New degrees. A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts and paying the regular renewal fee of forty dollars for those renewing to two-year certificates licenses or one hundred dollars for those renewing to five-year certificates licenses. An additional two-year or five-year extension, respectively, is added to the certificate license expiration date at the time of the addition of the new major, minor, or degree.

3. Individuals Added qualifications on life certificates. An individual who holds a life certificates certificate under section 67.1-02-02-01 may add degrees or endorsements to the education standards and practices board certification licensure records by submitting official transcripts and paying a the review fee of fifty dollars. An official duplicate of the certification life certificate showing the added degree will be issued to the life certificate holder at the time of the addition.

Official duplicate copies of lost life certificates or renewable certificates licenses will be provided at a cost to the holder of twenty dollars.

4. Restricted licenses. Programs that include a specialized rather than a regular professional education core are issued certificates licenses that restrict the holder to teaching in that specialty area. Restricted certificates licenses are issued to applicants with master's degrees in school psychology or speech therapy. Restricted certificates licenses are issued to applicants with degrees in mental retardation, deaf education, visually impaired, or preschool or kindergarten handicapped. All other special education categories require regular elementary or secondary qualifications. Restricted certificates licenses are also issued for baccalaureate level programs in vocational technical education and for reserve officers' training corps and Native American language instruction. Teachers with restricted certificates licenses may teach or substitute teach only in the specified area. Certification-in-early--childhood education---must---be---attached---to---an---elementary--education certification.

5. National board certification.

a. As a prerequisite, the applicant must:

(1) Have acquired a baccalaureate degree from a state-approved or accredited teacher education program;

(2) Hold a valid North Dakota educator's professional license;

- (3) Have successfully completed three years of teaching at one or more elementary, middle, or secondary schools in North Dakota; and
- (4) Currently be a North Dakota kindergarten through grade twelve public classroom instructor.

b. The applicant may apply:

- (1) For the guide to national board certification which includes the application process by contacting the education standards and practices board; and
- (2) For one-half of the application fee by submitting the completed application to the education standards and practices board by November first. Based upon availability of state funds, applications will be accepted and funded on a first-come, first-served basis.

c. Upon documented successful completion:

- (1) The national board for professional teaching standards certification may be added between renewal periods for a fee of one hundred dollars; and
- (2) An additional ten years is also added to the license expiration date at the time of the addition of national board for professional teaching standards certification.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000.

**General Authority:** NDCC 15-36-01, 15-36-08, 28-32-02

**Law Implemented:** NDCC 15-36-01

**67.1-02-05-05. Foreign transcripts and special needs.** The content of the laws and rules for teacher certification licensure may be fulfilled by providing the required documentation through a third party authorized by the candidate through an affidavit a signed, official verification provided by to the education standards and practices board in cases where foreign transcripts or adaptations for special needs are involved.

**History:** Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000.

**General Authority:** NDCC 15-36-01, 28-32-02

**Law Implemented:** NDCC 15-36-01



**TITLE 70**  
**Real Estate Commission**



MAY 2000

CHAPTER 70-02-04

70-02-04-23. Model rule for distance education. Distance education is defined as courses in which instruction does not take place in a traditional classroom setting but rather through other media if the teacher and student are separated by distance and sometimes by time.

1. A distance education course shall be approved if the real estate commission determines to its satisfaction that:
  - a. The distance education course serves to protect the public by contributing to the maintenance and improvement of the quality of real estate services provided by real estate licensees to the public;
  - b. An appropriate and complete application has been filed and approved by the real estate commission;
  - c. The information specified in the guidelines for distance education as adopted by the real estate commission has been submitted and approved; and
  - d. The distance education course meets the content and all other requirements prescribed in North Dakota Administrative Code chapter 70-02-02 for prelicensing education required by subsection 4 of North Dakota Century Code section 43-23-08 or the requirements prescribed in North Dakota Administrative Code chapter 70-02-04 for continuing education required by North Dakota Century Code section 43-23-08.2.

2. Courses which are presently ARELLO-certified will be approved under this rule upon provision of appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of the rules and statutes listed in subsection 1 and any other requirements of the real estate commission. Approval under this subsection will cease immediately should ARELLO certification be discontinued for any reason.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**TITLE 75**

**Department of Human Services**



APRIL 2000

CHAPTER 75-04-01

**AGENCY SYNOPSIS:** Regarding proposed amendments to North Dakota Administrative Code Chapter 75-04-01 Licensing of Programs and Services for Individuals With Disabilities.

**75-04-01-01:** Amends the definition of standards to change the name of the accreditation organization.

**75-04-01-06:** Adds language which allows the applicant or licensee to conduct criminal background checks on employees who work with clients and to allow the applicant or licensee to disclose the names, types of offenses, dates of conviction, and the position and duties of employees with a criminal record.

**75-04-01-15:** Amends the language to make the standards used for accreditation uniform for all licensees and to change the name of the accreditation organization.

**75-04-01-23:** Clarifies occupancy chapter language and adds language showing the criteria to be used in selecting an appropriate Life Safety Code chapter.

**75-04-01-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Adult day care" means comprehensive and coordinated activities provided on an ongoing basis to adults with developmental disabilities residing in the community.

Programs involve social, physical, recreational, and personal care training and activity with emphasis on stimulation, exposure, community orientation, and participation.

3. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
4. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
5. "Case management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
6. "Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through mental retardation - developmental disabilities case management.
7. "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group-living arrangement.
8. "Department" means the North Dakota department of human services.
9. "Developmental day activity" means a program with identified space, separate supervision, and separate records in which functional habilitative skills are developed. Training emphasis is focused on acquisition, retention, or improvement in self-help, socialization, and adaptive skills which takes place in a nonresidential setting.
10. "Developmental disability" means a severe, chronic disability of an individual which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is manifested before the individual attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;

- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living; and
- (7) Economic sufficiency; and

e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

- 11. "Developmental work activity" means a program with identified space, separate supervision, and separate records in which prevocational services are provided to clients or individuals with developmental disabilities not expected to be able to join the general work force within one year. Training is habilitative and directed at goals, including attention span and motor skills improvement and concepts, including compliance, attending, task completion, problem solving, and safety. When compensated, clients are generally paid at less than fifty percent of the minimum wage. Developmental work activity does not include supported employment programs.
- 12. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training; or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss, and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.
- 13. "Family support services" means a family-centered support service contracted for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
- 14. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation

or constitution of a legal entity as being authorized to act on behalf of the entity.

15. "Group home" means any community residential service facility licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than four individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
16. "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
17. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.
18. "Intermediate care facility for the mentally retarded" means a residential health facility operated pursuant to regulation under 42 CFR 442 and 483, et seq.
19. "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.
20. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.
21. "Mental retardation" means a diagnosis of the condition of mental retardation, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.
22. "Minimally supervised living arrangements" means either:
  - a. A group home with an available client adviser; or
  - b. A community complex that provides self-contained rented units with an available client adviser.
23. "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
24. "Resident" means an individual receiving services provided through any licensed residential facility or service.

25. "Standards" means requirements which, ~~when complied with,~~ result in accreditation by the ~~accreditation council for~~ services for individuals with disabilities council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for the mentally retarded, or for extended service results in accreditation by the rehabilitation accreditation commission (carf).
26. "Supported living arrangement" means a program providing a variety of types of living arrangements that enable individuals with disabilities to have choice and options comparable to those available to the general population. Clients entering this service shall have the effects of any skill deficits subject to mitigation by the provision of individualized training and follow-along services.
27. "Transitional community living facility" means a residence for clients with individualized programs consisting of social, community integration, and daily living skills development preliminary to entry into less restrictive settings.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000.

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

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

#### **75-04-01-06. Disclosure of criminal record.**

1. Each member of the governing body of the applicant, the chief executive officer, and any employees or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department any conviction of a criminal offense.
2. The applicant or licensee shall conduct criminal background checks on all persons employed who work with clients.
3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of conviction, and position and duties within the applicant's organization of employees with a criminal record.
4. Such disclosure must not disqualify the applicant from licensure, unless the conviction is for a crime having direct bearing on the capacity of the applicant to provide a service under the provision of this chapter and the convicted individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
- 3- 5. The department shall determine the effect of a conviction of an offense.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000.

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

**Law Implemented:** NDCC 25-16-03.1

**75-04-01-15. Standards of the department.** The department herein adopts and makes a part of these rules for all licensees the current standards used for accreditation by the accreditation--council--on--services--for--individuals--with--disabilities council on quality and leadership in supports for people with disabilities, additionally, for intermediate care facilities for the mentally retarded, standards for certification under 42 CFR 442 and 483 et seq., or for extended service, by the rehabilitation accreditation commission (carf). If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate 1990 standards of the accreditation--council--on--services--for--individuals--with--disabilities council on quality and leadership in supports for people with disabilities.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000.

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

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

**75-04-01-23. Safety codes.**

1. Applicant's intermediate care facilities for the mentally retarded shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department.
2. Applicant's residential service facilities which are not intermediate care facilities for the mentally retarded shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the residential service facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department.
3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.

4. Applicant's facilities housing individuals with multiple physical disabilities or impairments of mobility shall conform to American National Standards Institute Standard No. A117.1 (1980), or, if remodeled or newly constructed after July 1, 1995, with appropriate standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.
5. Applicant's and licensee's buildings used to provide day services must conform to the ~~chapters--pertaining--to--new--or--existing--educational--occupancies~~ appropriate occupancy chapters of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department and must meet applicable accessibility standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336. The selection of an appropriate Life Safety Code chapter shall be determined considering:
  - a. Primary activities in the facility;
  - b. The ability of clients occupying the facility to take action for self-preservation in an emergency; and
  - c. Assistance available to clients occupying the facility for evacuation in an emergency.
6. All licensed day service facilities must be surveyed for Life Safety Code compliance at least annually. The department must be notified and a resurvey may be required if any or the following conditions are present between annual inspections:
  - a. Occupancy increases of ten percent or more;
  - b. Primary usage of the facility changes;
  - c. Hazardous materials or processes are introduced into the facility;
  - d. Building alterations or modifications take place;
  - e. Clients requiring substantial assistance to evacuate in an emergency are enrolled;
  - f. There are public or client concerns about safety conditions; or
  - g. Other changes occur in physical facilities, activities, materials and contents, or numbers and capabilities of clients enrolled which may affect safety in an emergency.

**History:** Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995; April 1, 2000.

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

**Law Implemented:** NDCC 25-16-06



MAY 2000

CHAPTER 75-02-02

**AGENCY SYNOPSIS:** Regarding proposed amendments to North Dakota Administrative Code Chapter 75-02-02 Medical Services:

**75-02-02-03.2:** Adds a new section to create definitions for "county agency," "department," "home health agency," "medical emergency," "medically necessary," "provider," "recipient," "remedial services," "secretary," and "section 1931 group."

**75-02-02-08:** Is amended to clarify the availability and limits of specific services.

**75-02-02-11:** Is amended to clarify and simplify the lock-in process.

**75-02-02-12:** Is amended to clarify and remove duplicative language.

**75-02-02-13.1:** Is amended to remove duplicative language.

**75-02-02-14:** Is amended to conform to changes in statute.

75-02-02-03.2. Definitions. For purposes of this chapter:

1. "County agency" means the county social service board.

2. "Department" means the department of human services.

3. "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 participation.

4. "Medical emergency" means the sudden and unexpected onset of a medical or surgical condition which a prudent layperson would think is life-threatening or could cause death or severe, permanent damage to a person or unborn child if not treated immediately and for which the recipient secures medical care as soon thereafter as the medical care may be made available, and which is limited to severe difficulty in breathing, severe wounds, severe or unusual bleeding, severe pain, severe abdominal pain (except for constipation or menstrual cramps), severe burns, suspected heart attack, poisoning, inability to swallow, sudden onset of paralysis, unconsciousness, or any other medical condition which could cause death or severe, permanent damage to a person or unborn child if not treated immediately. Prehospital emergency medical services are not defined in particular in this section but are specifically defined in North Dakota Century Code section 50-24.1-15.
5. "Medically necessary" includes only medical or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the patient's diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the patient or provider; not investigational, experimental, or unproven; not excessive in scope, duration, or intensity; and provided at the most appropriate level of service that is safe, effective, and not more costly than alternative appropriate services or supplies.
6. "Provider" means an individual, entity, or facility furnishing medical or remedial services or supplies pursuant to a provider agreement with the department.
7. "Recipient" means an individual approved as eligible for medical assistance.
8. "Remedial services" includes those services, including rehabilitative services, which produce the maximum reduction in physical or mental disability and restoration of a recipient to the recipient's best possible functional level.
9. "Secretary" means the secretary of the United States department of health and human services.
10. "Section 1931 group" includes individuals whose eligibility is based on the provisions of section 1931 of the Social Security Act [42 U.S.C. 1396u-1].

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 50-24.1-04  
**Law Implemented:** NDCC 50-24.1-01

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 medically necessary 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 means 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 means 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 and 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.
  - 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~~ Nursing facility services (other than services in an institution for mental diseases) ~~for individuals--twenty-one--years--of--age--or--older--~~ "Skilled nursing-home." "Nursing facility services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home facility 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 for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.
- e. ~~Intermediate nursing care (other than services in an institution for mental diseases)~~ facility for the mentally retarded services. "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. "Intermediate care facility for the mentally retarded" has the same meaning as provided in chapter 75-04-01.
- 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 provide 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 facility, or elsewhere. "Physician's services" are means 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 means any of the following items and services when they are provided, based on ~~recommendation--of~~ certification of need and a written plan of care by 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 facility:
  - (1) Intermittent or part-time skilled 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,~~ or 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 or under the supervision of a registered nurse, when no home health agency is available to provide nursing services;:
  - (3) Medical supplies, equipment, and appliances ~~recommended~~ ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home;: and
  - (4) Services of a home health aide ~~who-is-an-individual~~ assigned-to-give-personal-care-services provided to a patient in accordance with the plan of treatment

outlined for the patient by the attending physician and in collaboration with 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. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.
- k. Private duty nursing services. "Private duty nursing services" are means nursing services provided, based on certification of need and a written plan of care which is 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, and by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, supervision of a registered nurse 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- l. Dental services. "Dental services" are means 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 Dental 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, including fitting, supplying, and repairing dentures. "Dentist" means a person licensed to practice dentistry or dental surgery. "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. "Dentures" 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. 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) m. Physical therapy. "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) n. Occupational therapy. "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) o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" are means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech 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} p. Prescribed drugs. "Prescribed drugs" are means 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.

q. Durable medical equipment and supplies. "Durable medical  
equipment and supplies" means those medically necessary  
items suitable for use in the home and used to treat  
disease, to promote healing, to restore bodily functioning  
to as near normal as possible, or to prevent further  
deterioration, debilitation, or injury 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. Durable medical equipment includes prosthetic and  
orthotic devices, eyeglasses, and hearing aids. For  
purposes of this subdivision:

{3} (1) "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. "Eyeglasses" means 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;

(2) "Hearing aid" means a specialized orthotic device individually fitted to correct or ameliorate a hearing disorder; and

(4) (3) "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. "Prosthetic and orthotic 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.

n: r. Other diagnostic, screening, preventive, and rehabilitative services.

(1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, ~~include~~ includes 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 means 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) (3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, ~~include~~ includes 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.

(4) "Screening services" consists 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.

~~e. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.~~

s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.

t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).

p= u. Any other medical care and any other type of remedial care recognized under state law, and specified by the secretary; ~~-----This term includes the following items,~~ including:

(1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency department to be medically necessary in the individual case.

(2) Family planning services, including drugs, supplies, and devices, when such services are under the

supervision medical direction of a physician. There will must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can may 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 apply to medical and remedial care and services covered or provided under the medical assistance program:

a. Coverage will may not be extended and payment will may not be made for diet remedies prescribed for eligible recipients.

b. Coverage will may not be extended and payment will may not be made for alcoholic beverages prescribed for eligible recipients.

c. Coverage will may not be extended and payment will may 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 are be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames is are 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 may 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~~ are 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 facility 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 does not afford necessary medical care, and has had the request approved.
- f. Coverage may not be extended and payment may not be made for transportation services ~~is-limited-in-accordance-with~~ except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.
- g. ~~Repealed-effective-January-1,-1997.~~
- h. Coverage will may not be extended and payment will may 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.
- h. Coverage may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department, and provided in response to a medical emergency.
- i. Coverage may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12, and provided in response to a medical emergency.
- j. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding

twenty-four treatments for spinal manipulation services and eight radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.

k. Coverage may not be extended and payment may not be made for medically necessary partial hospitalization services unless the provider requests and receives prior authorization from the department.

l. Coverage may not be extended and payment may not be made for therapeutic classes of medically necessary prescribed drugs, described in the state plan as requiring prior authorization, to the extent permitted under 42 U.S.C. 1396r-8(d)(5), unless the provider requests and receives prior authorization from the department.

3. a. Except as provided in subdivision b, remedial services are covered services.

b. Remedial services provided by residential facilities such as licensed ~~homes for the aged and infirm~~ basic care facilities, 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. a. 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.~~

b. The department may consider making payment if the vendor provider demonstrates that good cause for 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 of the time the services or procedures were furnished.

5. A vendor provider of medical services ~~which~~ who provides a covered service, but fails to receive payment due to the operation of subsection 4, and ~~which~~ who 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 department 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 members of the section 1931 group.
  - (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 the section 1931 group 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 to be eligible for medicaid for four calendar months following the last month for which the final cash payment was made of section 1931 group eligibility.

- (3) Families that received aid to families with dependent children payments who were in the section 1931 group 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 percentage 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) (5) All Eligible caretaker relatives and 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} (6) Pregnant women whose pregnancy-has pregnancies have been medically verified and who, except for income and assets, would be eligible as categorically needy.
- {11} (7) Pregnant women whose pregnancy-has pregnancies have 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} (8) Pregnant women whose pregnancy-has pregnancies have been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family ~~income-is~~ incomes are at or below one hundred thirty-three percent of the poverty level.
- {14} (9) 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} (10) Children under the age of six who meet the nonfinancial and asset requirements of the medicaid program and whose family ~~income-is~~ incomes are at or below one hundred thirty-three percent of the poverty level.
- {16} (11) Children, age six or older;--born--after--September--30, 1983; through eighteen, who meet the nonfinancial and asset requirements of the medicaid program and whose family ~~income-is~~ incomes are 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~~ Rural health clinics;
  - (8) ~~Physicians--employed-at-federally~~ 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} (4) 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, diagnosis, and treatment 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, including orthodontic services only upon referral from early and periodic screening, diagnosis, and treatment;
  - (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~~ Psychiatric services;
  - (19) Ophthalmic services;
  - (20) Obstetrical services; and
  - (21) Psychological services;
  - (22) Ambulance services;
  - (23) Immunizations;
  - (24) Independent laboratory and radiology services; and
  - (25) Public health unit services.
- f. A Except as provided in subdivision d, and if the department exempts the recipient, a primary care physician must be selected for each recipient.
- g. Primary care physicians may not be changed more-often-than at any time within ninety days after the recipient is informed of the requirements of this subsection, at redetermination of eligibility, and once every six months without with 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.

7. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:

- a. Required a prior treatment authorization request that was not granted;
- b. Imposed a limit that is exceeded;
- c. Imposed a condition that was not met;
- d. Specifically reserved authority to make determinations of medical necessity; or
- e. Upon review, determined that the service or supplies are not medically 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; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000.

**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

**75-02-02-11. Lock-in.**

1. For ~~the purpose~~ purposes of this section:

- a. "Lock-in" means the process used to limit a particular ~~aspect or aspects of an individual~~ recipient's medical care and treatment to a single physician or other provider in order to prevent the continued misutilization of ~~benefits~~ services.

- b. "Medical--emergency"--means--the--sudden--and--unexpected--onset--of--a--medical--condition--for--which--the--recipient--secures--care--after--onset;--or--as--soon--thereafter--as--care--is--reasonably--available. "Lock-in physician or provider" means a physician or provider selected by the lock-in recipient to provide care and treatment to the recipient.
- c. "Misutilization" means the incorrect, improper, or excessive utilization of medical care and services;--at the recipient's--instance--and--request; which may;--in some instances; increase the possibility of adverse reactions; interactions;--or disadvantageous effects to a recipient's health or may result in a decrease in the overall quality of care.
- d. "Primary--physician/provider"---means--the--physician--or provider--selected--by--the--locked--in--recipient--to--provide care--and--treatment--to--the--recipient.
- e. "Provider"---means--any--individual--or--entity--furnishing medical--or--remedial--care--or--service--under--a--provider agreement--with--the--division--of--medical--services.
2. Lock-in may be imposed by the division of medical services department on an individual a recipient who has demonstrated misutilization misutilized services, including;--but--not limited-to:
- a. Excessive--visitations--to Securing excessive services from more than one physician--or--other--practitioner--where provider when there is little or no evidence of a medical need for medical-care. those services;
- b. Excessive-drug Drug acquisition whether-or-not-detrimental to--health;--which--results--from--seeing--more--than--one physician--or--prescribing--practitioner. in excess of medical need resulting from securing prescriptions or drugs from more than one provider; or
- c. Excessive utilization of outpatient emergency services where when no medical emergency is present.
3. Lock-in shall be imposed using the following procedures:
- a. The determination of-the-need to lock-in a recipient shall be is made by the division of medical--services.--Such--a determination--shall--be--made--only--after--consultation--with--a person--with--professional--expertise--in--the--provision--of that--aspect--of--medical--care--or--service--which--the--recipient is--suspected--of--misutilizing department upon recommendation of medical professionals who have reviewed and identified the services the recipient appears to be misutilizing.

- b. 4. The following factors shall must be considered in determining if lock-in is to be imposed:
- (1) a. ~~Seriousness----and---extent~~ The seriousness of the misutilization;
  - (2) b. The historical utilization ~~pattern~~ of the recipient; and
  - (3) ~~The--recipient's--willingness--to-adhere-to-voluntary utilization-controls; and~~
  - (4) c. The availability of a primary-physician/provider lock-in physician or provider.
- e. 5. Upon a determination to impose a lock-in; ~~the-appropriate county-social-service-board-will:~~
- (1) ~~Provide:~~
  - a. The department shall provide the recipient with written notice of the:
    - (1) The lock-in; of-the decision;
    - (2) The recipient's right to choose the--primary physician/provider;--of--the a lock-in provider, subject to approval by the department and acceptance by the provider;
    - (3) The recipient's responsibility for-payment to pay for medical care or services rendered by providers any provider other than the-primary-physician/provider; and-of-the a lock-in provider; and
    - (4) The recipient's right to appeal;.
  - b. The appropriate county agency shall:
    - (2) (1) Obtain the recipient's selection of primary physician/provider a lock-in provider; and
    - (3) (2) Document the--interview that selection in the case record.
- d. 6. A--lock-in Lock-in may be imposed only on an individual recipients recipient and ~~cannot~~ may not be imposed on the an entire medical assistance unit. If more than one individual recipient within a unit is misutilizing medical care, each individual recipient must be treated separately.
- e. 7. A--lock-in--will Lock-in may be imposed ~~for-the-next-twelve months-of-the--recipient's--liability;--whether--these--twelve months--occur--consecutively--or--otherwise;--unless--the-case~~

~~requires an unrestricted time period~~ without regard to breaks in eligibility until the department determines lock-in is discontinued.

f- 8. No medical assistance payment will ~~may~~ may be made for ~~misutilized~~ misutilized medical care or services ~~of the misutilized type~~ furnished to the lock-in recipient by any provider other than the recipient's primary physician/provider lock-in physician or provider, except for:

(1) a. Medical care rendered in a medical ~~or surgical~~ emergency; or

(2) b. Medical care rendered by a provider upon referral by the ~~primary physician/provider~~ lock-in physician or provider and approved by the department.

4- 9. A recipient ~~has the right to~~ may appeal the decision to impose a lock-in; ~~the appeal may be made~~ in the manner provided by chapter 75-01-03.

**History:** Effective May 1, 1981; amended effective May 1, 2000.

**General Authority:** NDCC 50-24.1-02

**Law Implemented:** NDCC 50-24.1-01; 42 CFR Part 455

#### 75-02-02-12. Limitations on emergency room services.

1- ~~For the purposes of this section:~~

a- ~~"Medical emergency" means the sudden and unexpected onset of a need for medical care which the recipient secures immediately after the onset of the illness or injury, or as soon thereafter as the medical care can be made available, and which is limited to the following conditions and symptoms: crisis intervention, heart attack, chest pain, abdominal pain, stroke, coma, poisoning, suicidal attempt, convulsions, asthmatic attack, respiratory arrest, cardiac arrest, hemorrhage, earache, pneumonia, vomiting, diarrhea, and other conditions where a concise statement to the division of medical services satisfactorily demonstrates that medical necessity, as defined in subdivision b, required the provision of emergency room services.~~

b- ~~"Medical necessity", as applied to emergency room services, means a life-threatening situation or a situation requiring such services to prevent further deterioration of health in a patient or recipient suffering from an acute illness.~~

e. -- "Patient or recipient" means any individual approved as eligible for medical assistance by medical aid of North Dakota.

d. -- "Provider" means any individual, entity, or facility furnishing emergency medical services pursuant to a provider agreement with the division of medical services.

e. -- "Surgical emergency" means the sudden and unexpected onset of a need for surgical care which the recipient secures immediately after the onset of the illness or injury, or as soon thereafter as the surgical care can be made available, and which is limited to the following conditions and symptoms: fracture, head injury, accident, lacerations, burns, severe abrasions and contusions, animal bites, and other conditions where a concise statement to the division of medical services satisfactorily demonstrates that medical necessity, as defined in subdivision b, required the provision of emergency room services.

2. Except in life-threatening life-threatening situations, the nonphysician provider of emergency services shall assure:

- a. The collection of pertinent data from the patient;
- b. Screening or examination of patients the patient as deemed necessary to determine their the patient's medical condition;
- c. Rendering of indicated care, under the direction of a physician, if a medical or surgical emergency exists;
- d. If it is determined that the patient is a social services recipient, making an attempt to contact the recipient's personal physician, or one substituting for that physician, to approve services before they are given, unless a medical or surgical emergency exists;
- e. Referral of recipients to their the recipient's physician's office in cases where when emergency room services are not indicated; and
- f. That professional staff persons use their individual judgment in determining the need for emergency services.

3. 2. Physician providers shall:

- a. Determine when a medical or surgical emergency exists; and

- b. Assure that ~~social-service-recipients-are~~ a recipient is referred to the appropriate health delivery setting when emergency room services are not judged to be appropriate.
4. 3. Payment for emergency room services.
- a. Claims for payment, and documentation in support of those claims, must be submitted on forms prescribed by the ~~division--of--medical-services~~ department. The claim must contain sufficient documentation to indicate that a medical ~~or--surgical~~ emergency required emergency room diagnostic services and treatment.
- b. ~~Providers---~~ will Except as provided in subsection 4, providers must be paid for any medically necessary services authorized by a physician, which fact is properly noted on the request for payment.
- c. ~~Providers---~~ will Except as provided in subsection 4, providers must be paid for screening/examination screening or examination services rendered.
- d. Services Providers must be paid for services rendered to patients who reside out outside of the provider's regular service area and who do not normally utilize the provider's services will-be-automatically-covered.
5. 4. If the emergency room service claim does not demonstrate the existence of a medical ~~or--surgical~~ emergency, payment will must be denied (except for payment-for screening services as outlined-in-subsection-4); unless other-medical-necessity--can be--demonstrated the services are shown to be medically necessary by special report. The provider, upon receipt of notice of denial, may, in writing, make a special report. A special report must include a statement refuting the stated basis for the payment denial and affirmatively demonstrating ~~the--existence--of~~ a medical ~~or--surgical~~ emergency. ~~The division--of--medical--services--shall,--within-ten-days-after receipt-of-a-special-report,--make--written--response--to--the report,--stating--that-the-denial-of-payment-has-been-affirmed or-reversed.~~

**History:** Effective February 1, 1982; amended effective May 1, 2000.

**General Authority:** NDCC 50-24.1-02

**Law Implemented:** NDCC 50-24.1-01; 42 CFR Part 455

**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.

e. "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; and

d. -- "Recipient" means an individual approved as eligible for medical assistance.

e. b. "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; amended effective May 1, 2000.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

**75-02-02-14. County administration.**

1. Except as provided in subsection 2, the county where the medical assistance unit is physically present ~~will be~~ is responsible for the administration of the program with respect to that unit.
2. Where When a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. ~~For the purposes of apportioning each county's share of assistance costs in the medical assistance program, a fraction will be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For periods beginning July 1, 1984, each county's share of the amount expended, statewide, for the medical assistance program, will be determined by multiplying that county's fraction times the total of all county's assistance expenses.~~
4. ~~For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for the medical assistance program, excluding the cost of services furnished by regional human service centers, intermediate care facilities for the mentally retarded, home and community-based care for aged, disabled and developmentally disabled persons, and early and periodic screening and diagnosis and treatment (EPSDT) screening services.~~

**History:** Effective November 1, 1983; amended effective July 1, 1984; May 1, 1986; May 1, 2000.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-01.2-03



**TITLE 82**

**Teachers' Fund for Retirement, Board of Trustees of the**



MAY 2000

CHAPTER 82-01-01

**82-01-01-01. Organization of the teachers' fund for retirement.**

**1. Organization and administration.**

- a. History. The 1913 legislative assembly created the teachers' insurance and retirement fund by legislation codified as North Dakota Century Code chapter 15-39. This chapter provided a retirement program for public, nonpublic, and certain college teachers. In 1971, the legislative assembly repealed North Dakota Century Code chapter 15-39 and enacted North Dakota Century Code chapter 15-39.1 which created the present teachers' fund for retirement. The 1973 legislative assembly provided for teacher retirement options by enacting North Dakota Century Code chapter 15-39.2. The primary objective of the teachers' fund for retirement is to provide income security to retired teachers.
- b. Board of trustees. A seven-member board of trustees, as established by North Dakota Century Code section 15-39.1-05.1, is responsible for managing the fund.
- c. Qualified tax status of fund.
  - (1) Qualified plan. The fund is a qualified employee pension plan under sections 401 and 501 of the Internal Revenue Code of 1986, as amended [U.S.C. title 26].

(2) Exclusive benefit and purpose. As a qualified employee pension plan, all assets of the fund are held in trust for the exclusive benefit of members and their beneficiaries. Fund assets may not be diverted or used for any purpose other than to provide pension benefits and other incidental benefits allowed by law.

d. Investment of the fund. The assets of the fund are invested and managed by the North Dakota state investment board. The state investment board invests the fund's assets in accordance with the "prudent investor" rule.

e. Accrued benefits nonforfeitable. Upon plan termination or complete discontinuance of contributions under the fund, the rights of all participants to benefits accrued to the date of such termination or discontinuance will become nonforfeitable to the extent funded.

**2. Description of portion of organization and functions subject to North Dakota Century Code chapter 28-32.**

a. Overview. The teachers' fund for retirement is an "administrative agency" within the definition of that term under subsection 1 of North Dakota Century Code section 28-32-01.

b. Rulemaking. North Dakota Century Code section 15-39.1-07 authorizes the board of trustees to adopt rules as may be necessary to fulfill the responsibilities of the board. The board follows the procedures established in North Dakota Century Code chapter 28-32 in adopting rules. The rules adopted by the board implement various statutory provisions set forth in North Dakota Century Code chapter 15-39.1.

c. Administration. Administration rules for the state retirement and investment office as they pertain to the teachers' fund for retirement are contained in North Dakota Administrative Code title 103.

**3. Inquiries.** General inquiries and questions relating to policies of the board may be addressed to the executive director:

Executive Director  
1930 Burnt Boat Drive  
P.O. Box 7100  
Bismarck, ND 58502-7100

**History:** Amended effective August 1, 1983; November 1, 1985; September 1, 1990; November 1, 1994; January 1, 1998; May 1, 1998; May 1, 2000.

**General Authority:** NDCC 15-39.1-07  
**Law Implemented:** NDCC 28-32-02.1

## CHAPTER 82-02-01

**82-02-01-01. Definitions.** Unless made inappropriate by context, all words used in this title have the meanings given to them under North Dakota Century Code chapter 15-39.1. The following definitions are not established by statute and apply for the purpose of this title:

1. "Account balance" or "value of account" means the teacher's assessments plus interest at an annual rate of six percent compounded monthly.
2. "Administrative" means to manage, direct, or superintend a program, service, or school district or other participating employer.
3. "Benefit service credit" means employment service used to determine benefits payable under the fund.
4. "Covered employment" means employment as a teacher.
5. "Eligibility service credit" means employment service used to determine vesting and benefit eligibility for dual members and qualified veterans under the Uniformed Services Employment and Reemployment Rights Act of 1994. Eligibility service credit is not used for benefit calculation purposes.
6. "Extracurricular services" means outside of the regular curriculum of a school district or other participating employer which includes advising, directing, monitoring, or coaching athletics, music, drama, journalism, and other supplemental programs.
- 6- 7. "Participating employer" means the employer of a teacher.
- 7- 8. "Salary reduction or salary deferral amounts under 26 U.S.C. section 125, 401(k), 403(b), or 457" means amounts deducted from a member's salary, at the member's option, to these plans. These reductions or deferrals are part of salary when calculating retirement contributions. Amounts contributed by the employer on behalf of the member to these plans may Employer contributions to plans specified in 26 U.S.C. section 125, 401(k), 403(b), or 457 which are made for the benefit of the member will not be counted as retirement salary when calculating retirement contributions. Member contributions paid by the employer under IRC section 414(h) pursuant to a salary reduction agreement do not reduce salary when calculating retirement contributions.
- 8- 9. "Special teachers" include certified licensed special education teachers, guidance counselors, speech therapists, social workers, psychologists, librarians, audio visual or

media coordinators, technology coordinators, and other certified staff members licensed by the education standards and practices board provided they are under contract with a school district or other participating employer to provide teaching, supervisory, administrative, or extracurricular services.

- 9- 10. "Supervisory" means to have general oversight or authority over students or teachers, or both, of a school district or other participating employer.
- 10- 11. "Teaching" means to impart knowledge or skills to students or teachers, or both, by means of oral or written lessons, instructions, and information.
- 11- 12. "Vested" means the status attained by a teacher when the teacher has paid assessments to earn ~~five~~ three years of service credit for covered employment in this state.
- 12- 13. "Written agreement" means a teaching contract, school board minutes, or other official document evidencing a contractual relationship between a teacher and participating employer.

**History:** Effective September 1, 1990; amended effective May 1, 1992; May 1, 1998; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1, 15-39.1-07

## CHAPTER 82-03-01

**82-03-01-01. ~~Vested--teachers'~~ Teachers' withdrawal from fund - Refund.** When a teacher ~~who-is-vested~~ terminates covered employment, the teacher may claim a refund of assessments paid to the fund during membership. A teacher wishing to claim a refund of assessments must request an application from the administrative office, complete the form, and return it for processing. Once the application has been processed, the refund will be paid ~~after~~ the first day of the month following the expiration of one hundred twenty calendar days have expired from the last date of covered employment.

The waiting period may be waived by the board if the teacher produces evidence that the teacher will not be returning to covered employment in North Dakota. The following written evidence is required before the board will grant a waiver:

1. Proof of resignation or nonrenewal of contract;
2. Proof that the teacher's employer has accepted the resignation, i.e., letter or copy of official school board minutes; and
3. Proof that the individual has either accepted noncovered employment or permanently relocated out of state, or a medical statement from a medical doctor attesting to nonemployment during the upcoming school year for medical reasons.

No refund can be issued to a teacher who has terminated a teaching position only for the summer months or for a leave of absence.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 1998; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-20

**82-03-01-05. Purchase of benefit service credit.** A teacher may purchase additional eligible benefit service credit in accordance with the following:

1. Out-of-state teaching service at a public, private, or parochial school must be verified by the out-of-state employer or retirement system under-which, or both, where the service was earned.
2. Military service must be verified by submitting military service discharge documents.
3. ~~Professional education time-must-be-verified-by-submitting-an official-transcript-from-the-educational-institution--attended~~

organization service must be certified by the teacher's participating employer.

4. Legislative service must be certified by the teacher's participating employer and must indicate the number of uncompensated days and salary information as required by the fund.
5. Service Government agency service as a---federal administrator or teacher must be verified by the federal agency which employed the teacher.
6. Leave of absence from teaching service must be verified by the employer who granted such leave.
7. Nonpublic teaching service at a North Dakota private or parochial school must be verified by the employer or the retirement system, or both, where the service was earned.

In all cases, the purchase cost must be on an actuarial equivalent basis determined by applying the actuarial factors adopted by the board.

The cost may be paid in a lump sum or in installments. Installments may be made monthly, quarterly, semiannually, or annually for up to five years. Interest is charged on the unpaid balance at the actuarial assumption rate for investment earnings.

If a teacher retires prior to full payment of the purchase amount, service credit will be granted in proportion to the actual principal payments made, or the teacher may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

If a teacher passes away prior to full payment of the purchase amount, service credit will be granted in proportion to the actual principal payments made or the designated beneficiary may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

**History:** Effective September 1, 1990; amended effective May 1, 1992; April 1, 1994; May 1, 1998; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-24

**82-03-01-06. Veterans' rights.** A member may be entitled to eligibility service credit for military service and may purchase service credit for military service under applicable federal veterans' rights acts provided that the military service interrupted teachers' fund for retirement covered employment and an honorable discharge was received under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301 et seq.] provided that the member received an honorable discharge and had the

member's North Dakota teaching service interrupted by military duty after December 31, 1994. Interruption of service requires the member to enter military service within ninety days of leaving covered teaching employment and reenter covered employment within ninety days of the member's honorable discharge. A member eligible to receive military credit under USERRA will have the service credit recognized for vesting and benefit eligibility purposes.

In addition to having the service credit recognized for vesting and benefit eligibility purposes, at the member's option, a member eligible to receive military credit under USERRA may pay an amount calculated by the fund to allow the credit to be used for benefit calculation purposes. A member may purchase up to five years of military credit and must apply for and complete the purchase prior to retirement. The member must provide a copy of the member's military discharge papers (DD214) as proof of eligibility. The timeframe to purchase military service under USERRA begins with reemployment and is equal to three times the length of the military service but may not exceed five years.

The cost to purchase USERRA military credit for benefit calculation purposes is the member assessment rate required under North Dakota Century Code section 15-39.1-09 had the member's employment not been interrupted by military service. The member assessment rate must be applied to the member's annual salary at the time of the military leave. The member assessments must be paid by the member if the employer is withholding assessments under a salary reduction plan. If the employer is paying all of the member assessments in lieu of a salary increase, the employer is responsible for payment of any assessments owed. If the employer is paying a portion of the member assessments in lieu of a salary increase, both the member and employer are responsible for payment of the assessments owed by the member. The employer is required to pay contributions in an amount equal to the member assessments owed. No interest is charged if the credit is purchased within the timeframe allowed under USERRA.

If the credit is not purchased within the USERRA timeframe, the cost becomes the responsibility of the member and six percent interest is charged beginning with the date the USERRA timeframe elapsed.

**History:** Effective May 1, 1992; amended effective May 1, 1998; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-24, 15-39.2-01.2; 38 USC 2021-2026

82-03-01-07. Nonrecognition of waived service credit. The teachers' fund for retirement will not recognize for any purpose service credit from another retirement system that the member waived as a result of the member's participation in the public employees retirement system's defined contribution retirement plan.

**History:** Effective May 1, 2000.

General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-24

## CHAPTER 82-05-01

**82-05-01-01. Application for benefits.** A teacher or beneficiary must make written application for benefits on enrollment forms provided by the fund before benefits can be paid. The enrollment form must be signed by the teacher or beneficiary and notarized or witnessed by a plan representative. The form of payment option selected may not be changed after the first benefit payment has been accepted by the teacher or beneficiary except as allowed under section 82-05-02-02.

Retirement benefits may not be issued to a teacher who has terminated a teaching position only for the summer months or for a leave of absence.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-10

**82-05-01-03. Designation of beneficiary.** The teacher shall designate a survivor or a beneficiary in writing on written forms provided by the fund prior to the beginning of benefit payments under a joint-and-survivor-annuity. ~~After benefit payments have begun, the teacher may not change the designated survivor or beneficiary, except under the following circumstances:~~

1. ~~If the designated beneficiary predeceases the teacher in death, the teacher, upon remarriage, may name the new spouse as the designated beneficiary under the same retirement option selected at retirement.~~

2. ~~If the marriage of a teacher and the designated beneficiary is dissolved and if the divorce decree provides for sole retention of the retirement benefit by the teacher, the teacher upon remarriage may name the new spouse as the designated beneficiary under the same retirement option selected at retirement.~~

~~The teacher must provide proof of good health before the board can permit a change in the designated beneficiary. A medical examination conducted by a licensed medical doctor is required.~~

~~The teacher is required to provide proof of age for the new beneficiary.~~

~~The board must adjust the monthly retirement benefit to the actuarially equivalent amount based on the new designated beneficiary's age.~~

If the teacher is married, the teacher's spouse must be named as the primary beneficiary or the teacher must provide written spousal approval to name an alternate beneficiary. If the teacher is not married, or if the teacher has written spousal consent, the teacher may name any person, organization, church, or charity as beneficiary of the teacher's retirement account. If more than one beneficiary is named, the beneficiaries are not eligible to receive a monthly annuity for life.

After benefit payments have begun, the teacher may not change the designated survivor or beneficiary, except under the following circumstances:

1. Teachers who select the single life, five-year term certain and life, or ten-year term certain and life annuity plans may change their beneficiary at any time.
2. Teachers who select the one hundred percent joint and survivor or fifty percent joint and survivor annuity plans may only name one beneficiary and may not change their beneficiary after retirement, except under the following circumstances:
  - a. If the teacher's designated beneficiary precedes the teacher in death; or
  - b. If the marriage of a teacher and the designated beneficiary is dissolved and the divorce decree provides for sole retention of the retirement benefits by the teacher.

In these cases, the form of benefits shall automatically revert to the standard form of benefit payment under section 82-05-02-01 and a new beneficiary may be designated. The teacher, upon remarriage, may designate the new spouse as the primary beneficiary and may elect a joint and survivor benefit option under section 82-05-02-02.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16

~~82-05-01-04. Proof of marriage. A--teacher--applying--for--a retirement-benefit--with--a--continuing--annuity--under--the--joint--and survivor--option--must--provide--proof--of--marriage;--if-the-designated beneficiary-is-more-than-ten-years-younger-than-the--teacher. Repealed effective May 1, 2000.~~

~~History: Effective-May-1,-1992;-amended-effective-April-1,-1994-~~

~~General Authority: NDCC-15-39-1-07~~

~~Law Implemented: NDCC-15-39-1-10~~

## CHAPTER 82-05-02

**82-05-02-02. Optional forms of benefit payments.** A teacher may elect to receive benefits under article 82-05 in any one of the following forms:

1. **Option I.** A one hundred percent joint and survivor annuity.
2. **Option II.** A fifty percent joint and survivor annuity.
3. **Option III.** An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or sixty months, whichever is longer.
4. **Option IV.** An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or one hundred twenty months, whichever is longer.

A married member's spouse must consent in writing to the form of payment option elected by the member at retirement. If spousal consent is not obtained, the form of benefit payment option will be the fifty percent joint and survivor option.

Benefits under the optional forms of payment must be determined on an actuarial actuarially equivalent basis. The teacher's choice of benefit under this section is irrevocable; ~~provided, however, that if a teacher's beneficiary predeceases the teacher under options I or II, or if the marriage of a teacher and the designated beneficiary is dissolved and if the divorce decree provides for sole retention of the retirement benefit by the teacher, the form of benefits automatically reverts to the standard form of benefit under section 82-05-02-01~~ once the teacher has begun receiving benefits except under the following circumstances:

1. Under the single life, five-year term certain and life, and ten-year term certain and life annuity options, if a retired teacher marries, that teacher may change that teacher's beneficiary under section 82-05-01-03 and form of benefit payment to a joint and survivor option.
2. Under the one hundred percent joint and survivor and fifty percent joint and survivor annuity options, if a retired teacher's designated beneficiary precedes the teacher in death, or if the marriage of a teacher and the designated beneficiary is dissolved and the divorce decree provides for sole retention of the retirement benefits by the teacher, the form of benefits shall automatically revert to the standard form of benefit payment under section 82-05-02-01 and a new beneficiary may be designated under section 82-05-01-03. The teacher, upon remarriage, may designate the new spouse as the primary beneficiary and may elect a joint and survivor option.

The teacher must provide proof of good health before the board can permit a change in the designated beneficiary under the joint and survivor options. A medical examination conducted by a licensed medical doctor is required.

The teacher is required to provide proof of age for the new beneficiary. The board must adjust the monthly retirement benefit to the actuarially equivalent amount based on the new designated beneficiary's age.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16

**82-05-02-03. Level income option.** A teacher who retires prior to ~~being-eligible-for~~ social security benefits normal retirement age may elect the level income option. This choice of benefit option is irrevocable once the teacher has begun receiving benefits. Under the level income option, the teacher's monthly benefit is adjusted so that the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent basis. A teacher is not eligible for the level income option if the reduced level income benefit is less than two hundred dollars per month.

**History:** Effective September 1, 1990; amended effective May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16

## CHAPTER 82-05-04

82-05-04-01. Actuarial factors - Early retirement. The board shall adopt actuarial factors for use in determining benefit amounts under the optional joint and survivor, term certain and survivor, level income, and early retirement forms of annuity payments and in determining the cost of additional credit purchased by a member. In determining early retirement benefits under North Dakota Century Code section 15-39.1-12, the benefits to which a member is entitled shall be reduced 0.5 percent for each month that the early retirement date precedes the first day of the month coincident with or next following the earlier of the member's sixty-fifth birthday or the date at which current service plus the member's age will equal eighty-five.

**History:** Effective September 1, 1990; amended effective May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

82-05-04-02. Actuarial factors - Optional payment forms. Under North Dakota Century Code section 15-39.1-16, the actuarial factors used to determine benefit amounts under the optional joint and survivor, term certain and life, and level income forms of annuity payment shall be based on the following actuarial assumptions:

1. Interest rate - 8.00 percent per year, compounded annually.
2. Member's mortality (used for nondisabled members) - a mortality table constructed by blending forty percent of the mortality rates under the 1983 group annuity mortality table for males, without margins, setback four years, with sixty percent of the mortality rates under the 1983 group annuity mortality table for females, without margins, setback three years.
3. Beneficiary's mortality - a mortality table constructed by blending sixty percent of the mortality rates under the 1983 group annuity mortality table for males, without margins, setback four years, with forty percent of the mortality rates under the 1983 group annuity mortality table for females, without margins, setback three years.
4. Disabled member's mortality - a mortality table constructed by blending forty percent of the mortality rates under pension benefit guaranty corporation table Va for disabled males, with sixty percent of the mortality rates under pension benefit guaranty corporation table VIa for disabled females.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

82-05-04-03. Actuarial factors - Maximum benefits under section 415. In computing the maximum benefits under Internal Revenue Code section 415, as required under North Dakota Century Code section 15-39.1-10.6, the following actuarial assumptions must be used:

1. Interest rate - the interest rate assumption must be the same as the rate that is used in computing actuarially equivalent optional payment forms under section 82-05-04-02 except that:
  - a. The interest rate assumption may not be less than five percent for the purposes of converting the maximum retirement income to a form other than a straight life annuity with no ancillary benefits;
  - b. The interest rate assumption may not be greater than five percent for the purposes of adjusting the maximum retirement income payable to a member who is over age sixty-five so that it is actuarially equivalent to such a retirement income commencing at age sixty-five; and
  - c. The factor for adjusting the maximum permissible retirement income to a member who is less than age sixty-two years so that it is actuarially equivalent to such a retirement income commencing at age sixty-two years shall be equal to the factor for determining actuarial equivalence for early retirement under section 82-05-04-01 or an actuarially computed reduction factor determined using an interest rate assumption of five percent and the mortality assumptions specified in this section (except that the mortality decrement must be ignored if a death benefit at least equal to the single-sum value of the member's accrued benefit would be payable under the fund on behalf of the member if the member remained in service and the member's service was to be terminated by reason of the member's death prior to the member's normal retirement date), whichever factor will provide the greater reduction. The factor for determining actuarial equivalence for early retirement under the fund for any given age below age sixty-two years must be determined by dividing the early retirement adjustment factor that applies under section 82-05-04-01 at such given age by the early retirement adjustment factor that applies under the fund at age sixty-two years. Provided, however, that the adjustment under this subdivision to the maximum permissible retirement income for a member who is less than age sixty-two years may not reduce such maximum permissible retirement income below \$75,000, if the member's monthly retirement income commences at or after age fifty-five, or if such monthly retirement income commences prior to age fifty-five, an amount which is the actuarial equivalent of the \$75,000 limitation for age fifty-five, using the actuarial assumptions specified in this subdivision. Provided further, that the actuarial

adjustment provided in this subdivision does not apply for limitation years beginning after 1994 to income received as a pension, annuity, or similar allowance as a result of a member's disability due to personal injuries or sickness, or amounts received as a result of a member's death by the member's beneficiaries, survivors, or estate.

2. Mortality - the mortality assumptions must be based upon the mortality table prescribed by the secretary of the treasury of the United States pursuant to Internal Revenue Code section 415(b)(2)(E).

**History:** Effective May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

82-05-04-04. Actuarial factors - Purchase of service. Whenever the North Dakota Century Code permits a member to purchase service on an actuarially equivalent basis, the following actuarial assumptions shall be used:

1. Interest rate - 8.00 percent per year, compounded annually.
2. Mortality rates - the same table specified in section 82-05-04-02 for nondisabled members.
3. Retirement - the member will be assumed to retire at the age at which the member is first eligible for an unreduced retirement benefit. Such unreduced retirement date will be determined taking into account any purchased service and assuming the member continues in full-time covered service.
4. Salary increase rate - 5.40 percent per year, compounded annually.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

## CHAPTER 82-07-01

**82-07-01-03. Determination of disability - Procedures.** The following procedures govern the determination of disability benefits under the fund:

### 1. Application process.

- a. Application for disability benefits must be made within six thirty-six months from the last date of covered employment on the form provided by the fund. On a case-by-case basis, the board may extend the thirty-six month period according to the provisions of North Dakota Century Code section 28-01-25.
- b. If the fund member is unable or unwilling to file an application, the teacher's employer or legal representative may file the teacher's disability application.
- c. The application must describe the disability, explain the cause of the disability, the limitations caused by the disability, the treatment being followed, the efforts by the employer and the employee to implement reasonable accommodations, and the effect of the disability on the individual's ability to perform as a teacher.
- d. Applicants shall be provided information on potential services offered by the office of vocational rehabilitation.
- e. The employer's statement of disability must provide information about the teacher's sick leave benefits, explain how the disability affects the performance of the teaching duties, include a detailed listing of job duties, and describe efforts to provide reasonable accommodation for the teacher.

### 2. Medical examination process.

- a. The applicant for disability retirement must provide the fund with medical examination reports.
- b. An initial medical examination should be completed by the teacher's attending or family physician on the medical examination form provided by the fund. If deemed necessary by the fund's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination

report if deemed acceptable by the fund's medical consultant.

- c. The fund is not liable for any costs incurred by the applicant in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.
- d. A medical examination report is not necessary if the applicant provides written proof documenting eligibility for disability benefits under the Social Security Act. In such cases, the applicant is eligible for disability benefits under North Dakota Century Code section 15-39.1-18 without submitting further medical information to the fund but is subject to recertification requirements specified in this chapter.

### **3. Medical consultant review.**

- a. The fund shall retain a medical doctor to act as its consultant and evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant shall advise the board regarding the medical diagnosis and whether the condition is a "total disability".

### **4. Decision.**

- a. The board shall consider applications for disability retirement at regularly scheduled board meetings. The discussion concerning disability applications must be confidential and closed to the general public.
- b. The applicant must be notified of the time and date of the meeting and may attend or be represented.
- c. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the medical consultant's conclusions and recommendations.
- d. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed.
- e. The executive director may make an interim determination concerning eligibility for disability retirement benefits when the medical consultant's report verifies that a total

disability exists. However, the board must review the interim determination and make a final determination at its next regularly scheduled board meeting unless additional evidence or information is needed.

- f. The applicant shall be notified in writing of the decision.
- g. If the applicant is determined to be eligible for disability benefits, the disability annuity is payable on, or retroactive to, the first day of the month following the teacher's last day of paid employment.
- h. If the applicant is determined not to be eligible for disability benefits, the executive director shall advise the applicant of the appeal procedure.

**5. Redetermination and recertification.**

- a. A disabled annuitant is subject to redetermination and recertification to maintain eligibility. The schedule for redetermination and recertification must be as follows:

- (1) Temporary disability. On July first, following the first anniversary date of disability retirement, and every two years thereafter (unless normal retirement is reached). No further recertification is required after the fourth recertification of temporary disability has been filed and accepted. Basis recovery will begin when the member reaches normal retirement age.

- (2) Permanent disability. On July first, following the second anniversary date of disability retirement, and five years thereafter unless normal retirement is reached. No further recertification is required after the second recertification of permanent disability has been filed and accepted. Basis recovery will begin when the member reaches normal retirement age.

- b. The fund may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.

When a member who is drawing disability benefits is also eligible for normal retirement benefits at the time disability benefits commence, recertification will cease according to the following schedule:

Before age 60	Age 65
At or after age 60, before age 65	5 years
At or after age 65, before age 69	Age 70

At or after age 69

1 year

Basis recovery will also begin according to the above schedule.

- c. The fund will send a recertification form to the disabled annuitant to be completed and sent back to the fund.
- d. The fund may require the disabled annuitant to be reexamined by a doctor at the annuitant's own expense. The submission of medical reports by the teacher, and the review of those reports by the fund's medical consultant, may satisfy the reexamination requirement.
- e. The executive director must make the redetermination and recertification decision and bring the matter to the board only if warranted. The disability annuitant may appeal an adverse recertification decision to the board in the same manner as the initial determination.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 1998; May 1, 2000.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-18

CHAPTER 82-08-01

82-08-01-01. Payment in accordance with qualified domestic relations orders. Notwithstanding ~~subsection 3 of section 82-02-01-01 and this article, retirement benefits must be paid in accordance with any qualified domestic relations order (QDRO) issued in compliance with North Dakota Century Code section 15-39-1-12-2.~~ Repealed effective May 1, 2000.

History: Effective September 1, 1990.

General Authority: NDCG-15-39-1-07

Law Implemented: NDCG-15-39-1-12-2



**TITLE 89**  
**Water Commission**



APRIL 2000

CHAPTER 89-02-01

**89-02-01-09.2. Evaluation of applications - Factors considered.**  
The state engineer, for applications of statewide or interdistrict significance, and the board, for all applications to drain, shall consider the following factors:

1. The volume of water proposed to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
2. Adverse effects that may occur to the lands of lower proprietors. This factor is limited to the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.
5. The project's ~~impacts~~ impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.
6. The project's ~~impacts~~ impact on ~~ponds, -sloughs, -or-lakes-~~ on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

**History:** Effective February 1, 1997; amended effective April 1, 2000.  
**General Authority:** NDCC 28-32-02, 61-03-13  
**Law Implemented:** NDCC 61-01-26, 61-16.1-10(3), 61-32-03

**89-02-01-09.11. Conditions to permits - Extending time to complete project.** Unless otherwise specifically stated:

1. All permits must include the following conditions:
  - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
  - b. That construction ~~commence~~ must be completed within two years from the date of final approval.
2. All permits of statewide or interdistrict significance must include the following conditions:
  - a. All highly erodible drainage channels must be seeded to a sod-forming grass.
  - b. The vegetative cover must be adequately maintained for the life of the project or control structures must be installed, or a combination of these two criteria.
3. A permit may be extended beyond two years for good cause shown. If the permit was not of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the board. If the permit was of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the state engineer. No extension may exceed two years.

The state engineer or the board may attach other conditions to the permit if deemed necessary.

**History:** Effective February 1, 1997; amended effective April 1, 2000.  
**General Authority:** NDCC 28-32-02, 61-03-13  
**Law Implemented:** NDCC 61-15-08, 61-32-03

**89-02-01-28. Landowner assessment appeal to state engineer.** A landowner's appeal to the state engineer, claiming that the landowner will receive no benefit from the construction of a new drain, must be made within ten days after the hearing on assessments. The appeal must be in writing and must specifically state the facts upon which the claim is based.

**History:** Effective April 1, 2000.  
**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-21-22

CHAPTER 89-03-01

89-03-01-03. Amendment of application.

1. An applicant, ~~prior to being instructed to give notice as provided in section 89-03-01-04;~~ may amend an application without affecting the priority date. ~~An applicant, having been instructed to give notice as provided in section 89-03-01-04, may still request an amendment to the application, but the proposed amendment must be submitted to and approved by.~~ If the state engineer, however, the priority date will be changed to the date the request for determines the amendment is received by the state engineer if the amendment is likely to adversely effect the interests of an affect another applicant who has a permit whose application pending was submitted after the application sought to be amended and before the proposed amendment, the state engineer shall change the priority date of the amended application to the date the request for the amendment was received.
2. ~~In order to protect other intervening applications submitted in good faith, an applicant's ability to amend an application prior to being instructed to give notice as provided in section 89-03-01-04 will be limited, because a substantial amendment to a pending application could disrupt the objectives of the appropriation system.~~
3. A request to amend an application may be by letter or by the submission of an amended application form for a conditional water permit.
4. 3. If, prior to the request to amend, any notices of the water permit application of section 89-03-01-04 have been mailed or if the notice of hearing of section 89-03-01-05 has been published, the applicant shall mail corrected notices of application and, as the case may be, publish a submit an affidavit of service of corrected notice of hearing and a new hearing will be held on the amended application to the state engineer. If the notice of the water permit application has been published, the state engineer shall publish a corrected notice. The state engineer has the discretion to relieve the applicant from the duties of this subsection may determine that corrected notices need not be mailed or published if the state engineer considers determines the amendment to be is insubstantial. Costs of publication must be paid by the applicant.

History: Amended effective April 1, 1989; April 1, 2000.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04

**89-03-01-03.2. Assignment of an application to another person.** Requests for the assignment of an application for a water permit to another person must be submitted to the state engineer ~~on the form provided by the state engineer~~ in writing. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for assignment of the application. The application must describe the transferee's interest in the application for a water permit. The state engineer may request additional documentation of the transferee's interest.

**History:** Effective April 1, 1989; amended effective April 1, 2000.

**General Authority:** NDCC 28-32-03, 61-03-13

**Law Implemented:** NDCC 61-04-03, 61-04-04

**89-03-01-04. Notice of application.**

1. When a proper application is filed, the state engineer will shall forward the appropriate number of completed notice of application forms to the applicant. The notice will must include, ~~but is not limited to,~~ the following essential facts: the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the ~~time and place of hearing~~ notice of the water permit application will be published. The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the state engineer and that anyone who files written comments will be mailed a copy of the state engineer's recommended decision on the application.
2. Upon receipt of the completed notice forms, the applicant shall send a notice of application by certified mail to the following:
  - a. To the governing body of each city located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.
  - b. To the governing body of the township or other governing authority of each rural subdivision located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion. A rural subdivision is a subdivision which has lots of ten acres [4.05 hectares] or less and is geographically located outside of a city.
  - c. To the governing body of the township or other governing authority for each rural tract of land which is owned by more than ten individuals and is located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.

- d. Except for record title owners whose land falls within subdivision a, b, or c, each record title owner of real estate within a one-mile [1.6-kilometer] radius of the proposed point of diversion. The determination of title owners must be based on title records on file with the register of deeds of the appropriate county. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
  - e. To each person holding a water permit for the appropriation of water from an appropriation site located within a radius of one mile [1.61 kilometers] of the location of the proposed water appropriation site. The state engineer shall provide the applicant a list of all persons who must be notified under this subdivision.
  - f. To each municipal or public use water facility in the county in which the proposed water appropriation site is located. The state engineer shall provide the applicant a list of all municipal or public use water facilities that must be notified under this subdivision.
3. After notice of application has been mailed to those required by this section, the applicant shall properly complete an affidavit of notice and return it to the state engineer by certified mail. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices by certified mail. This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If a properly completed affidavit of notice is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of notice. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.

**History:** Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-05

**89-03-01-05. Publication of notice of hearing water permit applications.**

1. Upon receipt of an applicant's properly completed affidavit of notice by certified mail, the state engineer shall set-a--date for-a-hearing-on-the-application publish a notice of the water permit application.

2. The state engineer shall provide a notice of hearing the water permit application to the official newspaper of the county in which the proposed point of diversion is located and instruct the newspaper to publish the notice once a week for two consecutive weeks. ~~One of the publications of the notice of hearing must be published at least twenty days before the hearing.~~ The notice must specify a date by which any person having an interest in the application may submit written comments to the state engineer and must state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.
3. A copy of the notice of hearing ~~shall be forwarded~~ the water permit application must be sent to the applicant ~~so that the notice may be reviewed for accuracy.~~
4. The applicant ~~must~~ shall pay costs of publication.

**History:** Amended effective April 1, 1989; November 1, 1989; February 1, 1994; August 1, 1994; April 1, 2000.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 28-32-05, 61-04-05

**89-03-01-05.1. Notice of decision on water permit application.**  
~~The state engineer may give notice of a decision to grant or deny a water permit by mailing the decision, and findings and conclusions upon which it is based, to all parties either personally, by certified mail, or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the decision was served. Repealed effective April 1, 2000.~~

**History:** Effective August 1, 1994.

**General Authority:** NDCC 28-32-02, 28-32-13, 61-03-13

**Law Implemented:** NDCC 28-32-13

**89-03-01-06.1. Consideration of evidence not contained in the state engineer's record.** ~~Unless specifically left open by the hearing officer for the purpose of receiving additional evidence or testimony, the record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence that is not contained in the record. However, the state engineer, before considering any evidence not contained in the record, will transmit the evidence to the parties of record for their examination and comment. The costs of reproducing and transmitting the evidence must be paid in advance by the party offering the evidence. Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental~~

hearing-is-warranted.--If-a-supplemental-hearing-is-warranted,-ten-days-  
notice--by--certified--mail--must--be--afforded-the-parties-of-record-to  
inform-them-of-the-date,-time,-place,-and-nature-of--the--hearing;---All  
supplemental--hearings--must--be--held--in-Bismarck; Repealed effective  
April 1, 2000.

**History:** Effective-April-1,-1989;-amended-effective-February-1,-1994;  
**General Authority:** NDCC-28-32-02,-61-03-13  
**Law Implemented:** NDCC-28-32-07

**89-03-01-06.2. Notice of continuance - Responsibility.** If any party to a water permit hearing requests and receives a continuance of a water permit hearing, that party shall provide serve notice of the continuance as set forth in sections 89-03-01-04--and--89-03-01-05 upon any person who was served with notice of the original hearing. Service of notice of the continuance must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure. The cost of the notice must be borne by the party requesting the continuance.

**History:** Effective April 1, 1989; amended effective April 1, 2000.  
**General Authority:** NDCC 28-32-02, 61-03-13  
**Law Implemented:** NDCC 61-04-04, 61-04-05.1

**89-03-01-06.3. Record - Official notice.** Unless specifically excluded by the state engineer or the hearing officer, the record in each water permit hearing--heard--by--the--state-engineer application proceeding includes, when available, the following reports or records, or portions thereof, relevant to the proposed appropriation:

1. United States ~~soil~~ department of agriculture natural resources conservation service reports including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and state water commission streamflow records.
3. United States geological survey and state water commission water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. State water commission water permit files.
7. State water commission annual water use reports.
8. State water commission and United States geological survey ground water level data.

9. North Dakota board of water well contractors well completion reports.
10. State water commission test hole records.
11. State water commission water resource investigations reports and ground water study reports.
12. State water commission and United States geological survey county ground water study reports.
13. Information in state water commission files and records and other published reports.

**History:** Effective February 1, 1994; amended effective April 1, 2000.

**General Authority:** NDCC 28-32-06

**Law Implemented:** NDCC 28-32-06

## CHAPTER 89-03-02

**89-03-02-03. Amendment of application.** An applicant for a change in purpose of use or a change in point of diversion, prior to being instructed to give notice as provided in section 89-03-01-04, may amend an application. An amendment request may be made by letter or by submission of an amended application.

If, prior to the request to amend, any notices of an application provided by section 89-03-02-05 for a change in the purpose of use or a change in the point of diversion have been mailed ~~or if the notice of hearing of section 89-03-02-06 has been published~~, the applicant shall mail corrected notices of the application to all persons who were sent the original notice and, ~~as the case may be, publish a corrected notice of hearing and a new hearing~~ shall submit an affidavit of service of corrected notice to the state engineer. If the notice of application has been published, the state engineer shall publish a corrected notice. The state engineer has the discretion to relieve the applicant from these duties of corrected notice may determine that corrected notices need not be mailed or published if the state engineer considers determines the amendment ~~to be~~ is insubstantial. Costs of publication must be paid by the applicant.

**History:** Amended effective April 1, 1989; April 1, 2000.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-04, 61-04-15.1

**89-03-02-06. Publication of notice of hearing an application for a change in the purpose of use or point of diversion.** ~~Procedures in section 89-03-01-05 are applicable to publication of a notice of hearing required for~~ Notice of an application or an amendment to an application for a change in the purpose of use or a change in the point of diversion must be published in the same manner as provided for in chapter 89-03-01 for water permit applications or amendments to water permit applications.

**History:** Amended effective April 1, 1989; April 1, 2000.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-05, 61-04-15.1

**89-03-02-08. Assignment of a water permit to another person.** Applications for the assignment of a water permit to another person must be submitted to the state engineer ~~on the form provided by the state engineer~~ in writing. When title of land on which there is a water permit for irrigation is transferred, either the transferee or the holder of the permit may apply for assignment of the water right. The application must describe the transferee's interest in the water permit. The state engineer may request additional documentation of the transferee's interest.

**History:** Effective April 1, 1989; amended effective February 1, 1997;  
April 1, 2000.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-15

**ARTICLE 89-09**

**WETLAND RESTORATION PERMITS**

[Repealed effective April 1, 2000]

**TITLE 92**

**Workers Compensation Bureau**



MAY 2000

CHAPTER 92-01-02

**92-01-02-11.1. Attorney fees.** Following an attempt to resolve a dispute through the ~~worker-adviser-program~~ office of independent review, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to binding arbitration, administrative hearing, district court, or supreme court and the employee prevails; ~~when an order reducing or denying benefits is submitted to binding arbitration and the employee prevails;~~ or when an ~~informal~~ a managed care decision reducing or denying benefits is submitted to binding dispute resolution and the employee prevails subject to the following:

1. ~~Attorneys--must--be-paid~~ The bureau shall pay attorneys at the rate of eighty-five ~~ninety-five~~ dollars per hour for all actual and reasonable time other than travel time when the matter is submitted to formal administrative hearing, to binding arbitration, or to binding dispute resolution and the employee prevails. Travel time must be paid travel time. The bureau shall pay attorney travel time at the rate of forty ~~forty-five~~ dollars per hour.
2. Legal ~~The bureau may pay legal~~ assistants and third-year law students or law school graduates with a doctor of laws degree who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys may be paid up to forty ~~fifty~~ dollars per hour for all actual and reasonable time other than travel time. Travel time must be paid ~~The bureau shall pay travel time at the rate of twenty~~ twenty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree,

in a legal assistant or paralegal program, from an accredited college or university, or a legal assistant certified as such by the national association of legal assistants.

3. Total fees paid by the bureau for all legal services in connection with a claim dispute regarding an administrative order may not exceed the following:
  - a. Except for an initial determination of compensability, ~~attorney--fees--may--not--exceed~~ twenty percent of the additional amount awarded.
  - b. ~~At-a-rate-of-eighty-five-dollars-per-hour-the-sum-of-seven hundred-dollars;-plus-reasonable-costs-incurred;-for-legal services-in-connection-with-an-offer-by-the-bureau-to-make a-lump-sum-settlement-pursuant-to-subsection-1-of-North Dakota-Century-Code-section-65-05-25:~~
  - c. ~~The--total--sum-of-one~~ Two thousand eight hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if ~~the--format~~ a hearing request is resolved by settlement before the evidentiary administrative hearing is held.
  - d. ~~The--total-sum-of-three~~ Four thousand six hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held.
  - e. ~~The--total-sum-of-four~~ Four thousand five hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. ~~The--total-sum-of-five~~ Six thousand five hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
  - f. ~~The--total--sum--of--six~~ Seven thousand five three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. ~~The--total-sum-of-seven~~ Eight thousand two one hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
  - g. ~~If--the--bureau--has--awarded--benefits--and--the-employer requests-a-rehearing;-the-bureau-may;-in--its--discretion; pay--the--employee's-attorney-fees-and-costs-in-connection with-the-rehearing;--Total--fees--paid--pursuant--to--this section--may--not--exceed--the--sum--of--one-thousand-five hundred-dollars:~~
  - h. ~~The--total-sum-of-six~~ Six hundred dollars, plus reasonable costs incurred, for services in connection with binding

arbitration, if the employee prevails; provided further that the fees may not exceed twenty percent of the amount awarded.

- i. g. The total sum of one One thousand one hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails. The total sum of five hundred dollars plus reasonable costs incurred; if the employer requests binding dispute resolution and the employee prevails;
4. The maximum fees specified in subdivisions b, c, d, and e; f, and g of subsection 3 include all fees paid by the bureau to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same claim dispute regarding an administrative order at all stages in the proceedings. The hourly rate specified in subsection 1 and subdivision b of subsection 3 is applicable to fees paid pursuant to North Dakota Century Code sections 65-02-08, 65-02-15, and 65-02-27 after August 1, 1995. A "claim" "dispute regarding an administrative order" includes all matters affecting rights of an employee in connection with one or more work injuries that are or reasonably could be included in a single administrative order or application for benefits proceedings subsequent to an administrative order including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.
5. Upon application of the employee's attorney and a finding by the bureau that the legal or factual issues involved in the dispute are unusually complex, the bureau may approve payment of reasonable fees in excess of the maximum fees provided by subdivisions e and d of subsection 3. If the bureau approves payment of fees in excess of the maximum fees provided by subdivisions e and d of subsection 3, the bureau shall set a new maximum fee, which may not be exceeded. Upon application of the employee's attorney to the appellate court and a finding by the court that the legal or factual issues involved in the appeal were unusually complex, the court may approve payment of reasonable fees in excess of the maximum fee provided by subdivisions b, c, d, and e and f of subsection 3. All applications for additional fees in excess of the maximum fees must contain a concise statement of the reasons for the request, including a summary of the any factual or legal issues, or both, justifying such the request, and an explanation concerning of why the issues are unusually complex. Factors that must be considered in The bureau's denial of a request to exceed the attorney fee cap is not a "dispute relating to payment or denial of an attorney's fee" under North Dakota Century Code section 65-02-08 which requires submission to a hearing officer or arbitrator for a decision. In determining whether the factual or legal issues

are unusually complex include, the bureau shall consider factors including the following:

- a. The extent of the prehearing and posthearing discovery;
  - b. The number of depositions;
  - c. The number of legal or factual issues in dispute; and
  - d. Whether the legal issues or relevant statutes have been previously interpreted by the North Dakota supreme court.
6. All time must be recorded in increments of no more than six minutes (one-tenth of an hour). ~~Contemporaneous time records must be kept and made available to the bureau, upon request made at any time within two years of the date recorded.~~
7. ~~"Minimum" billings in increments greater than six minutes (one-tenth of an hour) are not permitted.~~
8. If the bureau is obligated to pay the employee's attorney fees, the attorney shall submit to the bureau a final statement upon resolution of the matter ~~on forms provided by the bureau for that purpose, or on other forms acceptable to the bureau.~~ All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The signature of the attorney constitutes a certificate by the attorney that the attorney has not sought or obtained payment, ~~nor~~ and will not seek payment of any fees or costs from the employee relative to the same services dispute regarding an administrative order. The bureau may deny fees and costs that are determined to be excessive or frivolous.
- 9- 8. The following costs will be reimbursed:
- a. Actual postage.
  - b. Actual toll charges for long-distance telephone calls.
  - c. Copying charges, at twenty cents per page.
  - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the bureau.

- e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the bureau. Costs for typing and clerical or office services will not be reimbursed.

10- 9. The following costs are will not allowable be reimbursed:

- a. Facsimile charges.
- b. Express mail.
- c. Additional copies of transcripts.
- d. Costs incurred to obtain medical records.
- e. On-line computer-assisted legal research.
- f. Copy charges for documents provided by the bureau.

~~Fees--for--reporters--must--be--The--sum--of--twenty--five--dollars--per--hour, for--appearance--at--hearing--or--other--proceeding;--plus;--two--dollars--and fifty--cents--per--page--for--transcription--and--original--transcript;--and twenty--cents--per--page--for--additional--copies. The bureau shall also reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.~~

**History:** Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-15

**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03

#### 92-01-02-21. Employee service arrangements.

##### 1. Definitions: As used in this section,

a. ~~"Client employer" means an entity that obtains one or more temporary employees from an employment services contractor.~~

b. ~~"Employee service arrangement" means an arrangement in which a client employer uses the services of an employment services contractor to obtain all or some of its employees.~~

e. ~~"Employment services contractor" "staffing service" means an entity in the business of employing temporary employees for the purpose of providing the services of the temporary employees employer under subsection 3 of section 65-01-08 which offers its services to the public, provides employees' services to more than one client employer~~

company, and was not created for the purpose of hiring and leasing back the employees of specific client companies.

d. -- "Temporary--employee" means an individual who is placed by an employment services contractor with a--client--employer through an employee service arrangement.

2. Responsibility for payment of premium.

a. Premium---on---payroll---must---be---based---on---the Rate classifications and rates which for employees provided by a staffing service must be those which would apply to as if the work were performed by the temporary--employee employees for the client employer company.

b. Pursuant--to--North--Dakota--Century--Code--section--65--04--04; both--a--client--employer--and--an---employment---services contractor---must---contribute---premiums---for---workers' compensation--coverage--for--their--respective--shares--of--the risk---associated--with--the--work--related--activities--of temporary--employees.---An--employment--services--contractor shall--comply--with--the--North--Dakota--Workers--Compensation Act--and--maintain--an---active---account---for---workers' compensation--coverage--of--its--staff--employees--and--for--its share--of--the--workers'--compensation--coverage--for--the temporary--employees--it--provides--to--client--employers. Moneys--paid--to--the--bureau--by--an--employment--services contractor---for--premiums--attributed--to--employment--of temporary--employees--constitute--a--contribution--of--premiums to--the--fund--by--that--employment--services--contractor.---A client--employer--shall--contribute--premiums--for--its--share--of the--risk--associated--with--each--temporary--employee--obtained from--an--employment--services--contractor--as--part--of--an employee--service--arrangement.---Every--client--employer--shall either--remit--premiums--for--that--risk--directly--to--the--bureau or--enter--into--an--agreement--through--which--the--employment services--contractor--collects--those--premiums--on--behalf--of the--bureau--through--its--charges--to--the--client--employer--and remits--those--premiums--to--the--bureau--on--behalf--of--the client--employer.---Remuneration--paid--by--a--client--employer; pursuant--to--such--an--agreement;--for--premiums--attributed--to a--temporary--employee--obtained--as--part--of--an--employee service--arrangement--constitutes--a--contribution--of--premiums to--the--fund--by--that--client--employer.

e. The bureau shall apply the experience modification modifier of the employment--services--contractor staffing service to the premiums attributed to an employee service arrangement unless the bureau determines the entity is not an--employment--services--contractor a staffing service as defined by this rule.

c. For purposes of the payment of premium, a staffing company is considered a subcontractor and a client company is considered a general contractor pursuant to subdivision c of subsection 17 of North Dakota Century Code section 65-01-02.

3. Determination of staffing service.

a. The bureau may determine whether an entity is a staffing service under this rule and North Dakota Century Code section 65-01-08. If the bureau determines an entity is not a staffing service, the client company shall be responsible for maintaining a workers compensation account and for the payment of premium for coverage of the employees.

b. The factors the bureau may consider when determining whether an entity is a staffing service under this rule include the number of client companies handled by the staffing service, the length of time the staffing service has been in existence, the extent to which the staffing service extends its services to the general public, the degree to which the client company and staffing service are separate and unrelated business entities, the repetition of officers or managers between the client company and staffing service, and the extent to which a client company has an ownership or other interest in the staffing service.

c. The bureau may require information from any staffing service including a list of current client company accounts, staffing assignments, payroll information, and rate classification information.

d. A client company shall provide any information requested by the bureau regarding the identity of any staffing service with which it has contracted.

**History:** Effective July 1, 1991; amended effective January 1, 1992; April 1, 1997; August 1, 1998; May 1, 2000.

**General Authority:** NDCC 65-02-08, 65-04-17

**Law Implemented:** NDCC 65-01-08, 65-04-17

**92-01-02-25. Permanent impairment evaluations and disputes. A dispute-as-to-the-percentage-of-an-employee's-permanent-impairment--must-be-resolved-in-accordance-with-this-section.**

**1. Definitions:--In-this-section:**

**a. "Dispute"--means--an--employee-has-reached-maximum-medical-improvement-in-connection-with-a-work-injury-and-has--been-evaluated---for--permanent--impairment;--and--there--is--a**

disagreement arising from the evaluation that affects the amount of the award. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.

b. "Maximum medical improvement" means the level of recovery at which further recovery from an injury or disease is not anticipated based on reasonable medical probability and clinical findings over a period of time indicate the medical condition is stable. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the evaluation that affects the amount of the award. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, fourth edition.

c. "Medical specialists" means those medical professionals who have had instruction in the use of the American medical association's "Guides to the Evaluation of Permanent Impairment" relating to the evaluation of permanent impairment, agree to have their names listed by the bureau as medical specialists, and who are:

(1) Licensed chiropractors who are board-certified chiropractic orthopedists.

(2) Licensed physicians who are board-certified medical specialists.

d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a significant permanent impairment caused by the work injury that will likely be in excess of fifteen percent whole body.

2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, fourth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work and non-work-related injuries or conditions.

3. The bureau shall establish a list of medical specialists within the state who have the training and experience necessary to conduct an evaluation of permanent impairment.

The bureau may include in the list medical specialists from other states if there is an insufficient number of specialists in a particular specialty within the state who agree to be listed. When an employee requests an evaluation of impairment, the bureau shall schedule an evaluation with a physician from the list. The bureau and employee may agree to an evaluation by a physician not on the current list. In the event of a medical dispute, the bureau shall furnish the list of appropriate specialists to the employee. The bureau and the employee, if they cannot agree on an independent medical specialist, shall choose a specialist by striking names of medical specialists from the appropriate specialty until a name is chosen.

4. ~~If there is a dispute involving an employee who resides outside of North Dakota, the bureau may require the employee to return to this state for an independent evaluation. If the bureau approves an independent evaluation in another state, the bureau and the employee, if they cannot agree on a specialist, shall choose a specialist by striking names from a list of approved medical specialists in the other state, if a list is available, or from some comparable list of appropriate medical specialists in that state.~~

5. Upon receiving a permanent impairment rating report from the doctor, the bureau shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.

5. Permanent mental and behavioral disorder impairment ratings.

a. Any physician determining permanent mental or behavioral disorder impairment shall:

(1) Include in the rating only those mental or behavioral disorder impairments not likely to improve despite medical treatment;

(2) Use the instructions contained in the American medical association guides to the evaluation of permanent impairment, fourth edition, giving specific attention to:

(a) Chapter 4, "nervous system"; and

(b) Chapter 14, "mental and behavioral disorders"; and

(3) Complete a full psychiatric assessment following the principles of the American medical association guides to the evaluation of permanent impairment, fourth edition, including:

- (a) A nationally accepted and validated psychiatric diagnosis made according to established standards of the American psychiatric association as contemplated by the American medical association guides to the evaluation of permanent impairment, fourth edition; and
  - (b) A complete history of the impairment, associated stressors, treatment, attempts at rehabilitation, and premorbid history and a determination of causality and apportionment.
- b. If the permanent impairment is due to organic deficits of the brain and results in disturbances, of complex integrated cerebral function, emotional disturbance, or consciousness disturbance, then chapter 4, "nervous system", must be consulted and may be used, when appropriate, with chapter 14, "mental and behavioral disorders". The same permanent impairment may not be rated in both sections. The purpose is to rate the overall functioning, not each specific diagnosis. The impairment must be rated in accordance with the "permanent mental impairment rating work sheet" incorporated as appendix A to this chapter.
  - c. The permanent impairment report must include a written summary of the mental evaluation and the "report work sheet" incorporated as appendix A to this chapter.
  - d. If other work-related permanent impairment exists, a combined whole-body permanent impairment rating may be determined.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-12.2

**92-01-02-53. Workers compensation bureau scholarship fund - Application criteria - Refund.** An applicant for a workers' compensation scholarship offered under section 65-05-20.1, must complete the application form required by the bureau. The scholarship committee will use the information on the application form to determine which applicants receive the scholarship and may require an applicant to submit additional supporting information. The minimum required grade point average is a two point zero on a four point zero scale, or its equivalent. ~~If--there-is-insufficient-funds-to-award-full-scholarships-to-all-qualified-applicants,-the-scholarship-committee-shall--award--the-scholarships--based--on-the-financial-need-of-the-applicants-and-the~~ The bureau may award individual scholarships in any amount up to one three thousand five-hundred dollars per year. Applicants who are awarded the scholarship one year must reapply to receive the scholarship in a

subsequent year. If the amount awarded to the applicant is greater than the amount owed the institution over the course of the school year, the excess award must be refunded to the bureau. If the applicant who is awarded a scholarship withdraws ~~from~~ from the institution and there are scholarship funds to be refunded, the institution shall refund those funds to the bureau according to the refund priorities of the institution.

**History:** Effective August 1, 1997; amended effective May 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-20.1

92-01-02-54. Deductible programs. The bureau and an employer may contract for a deductible program. When a deductible program contract is entered into, the employer will reimburse the bureau for benefits payable on individual claims up to the agreed deductible amount. The bureau shall provide a premium credit to participating employers based on an actuarial analysis of the contracted deductible and the rate classification of the employer.

1. Eligibility. Eligibility for participation in a deductible program is based on the financial stability and resources of the employer. Participating employers must be in good standing with the bureau and maintain a risk management program approved by the bureau. Any deductible contract must require the employer to report work injuries to the bureau within forty-eight hours of their occurrence.

The bureau may require participating employers to undergo a financial audit to ensure financial stability. The audit may include a credit check and review of company financial reports.

The bureau shall analyze each proposed contract based on risk analysis and sound business practices. The bureau may refuse any deductible program if it determines that the proposed contract does not represent a sound business practice or decision. Past participation in a deductible program does not guarantee continued eligibility. The bureau may decline renewal of any deductible program.

2. Claim payment. The bureau shall process and pay claims in accordance with North Dakota Century Code title 65. The employer shall reimburse the bureau for all costs paid by the bureau on individual claims up to the amount of the contractually agreed deductible.

In the event a third-party recovery on a claim is made, the bureau's subrogation interest must first be applied to the amounts paid on the claim by the bureau in excess of the deductible. Any additional subrogation recovery allowed by

law must be applied to reduce the deductible amount by the employer.

The bureau shall deduct any delinquent deductible reimbursements from any subrogation amounts recovered on any claim.

3. Premium payment. Premium is due at policy inception. A deductible contract does not change premium payment requirements or options.
4. Financial security. The bureau may require an employer to provide security in a form and amount acceptable to the bureau.

If the contract provides an aggregate cap payable by an employer for the contract period, the security bond may not exceed the aggregate limit. The bureau may require an employer to provide an initial deposit to offset claims costs up to the deductible amount.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 65-02-08  
**Law Implemented:** NDCC 65-04-19.3

92-01-02-55. Dividend programs. The bureau may offer dividends to qualifying employers. Eligibility and distribution:

1. Dividends are not guaranteed. Dividends may only be declared by the North Dakota workers compensation board of directors.
2. To be eligible, employers shall have an account in effect for the entire year for which a dividend is declared. All employers shall report work injuries to the bureau within forty-eight hours of their occurrence. Premiums paid and losses incurred during a dividend review period defined by the bureau, and employer participation in loss control and other programs identified by the bureau, will be used to determine the amount of the dividend. Minimum premium accounts are not eligible for dividend payments.
3. The bureau shall offset past-due balances on any account by the dividend earned on that account.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 65-02-08  
**Law Implemented:** NDCC 65-04-19.3

92-01-02-56. Retrospective rating program. The bureau and an employer may elect to contract for a retrospective rating program. Under a retrospective rating program, the employer's retrospective

rating premium is calculated using factors including claims costs and actual standard premium and basic premium factors. The bureau shall calculate basic premium factors for each level of premium and maximum employer liability.

Retrospective rating contracts may provide for the calculation of employer or bureau interest credits and debits pertaining to claims payments, deposits, or premium balances.

1. Eligibility. Eligibility for participation in a retrospective rating program is based on the financial stability and resources of the employer. Participating employers must be in good standing with the bureau and shall maintain a risk management program approved by the bureau. Any retrospective rating contract must require the employer to report work injuries to the bureau within forty-eight hours of their occurrence.

The bureau may require participating employers to undergo a financial audit to ensure financial stability. The audit may include a credit check and review of company financial reports.

The bureau shall analyze each proposed contract based on risk analysis and sound business practices. The bureau may refuse a retrospective rating program if it is determined that the proposed contract does not represent a sound business practice or decision. Past participation in a retrospective rating program does not guarantee continued eligibility. The bureau may decline renewal of any retrospective rating program.

2. Retrospective rating program. A participating employer chooses one maximum liability limit per account. The retrospective rating program applies to the account's entire premium period. The retrospective rating program option is based on aggregate claims costs for all claims for injury or death occurring in the contract year.
3. Claim payment. The bureau shall process and pay claims in accordance with North Dakota Century Code title 65. In the event a third-party recovery on a claim is made, the bureau's subrogation interest must first be applied to the amounts paid on the claim by the bureau. In the event the subrogation recovery reduces the retrospective premium, a refund must be made to the employer.
4. Premium payment. Premium is due at policy inception. The selection of a retrospective rating option does not change premium payment requirements or options.
5. Financial security. The bureau may require an employer to provide security in a form and amount acceptable to the

bureau. The amount of the security may not exceed the initial nonpaid portion of the maximum possible retrospective premium.

History: Effective May 1, 2000.  
General Authority: NDCC 65-02-08  
Law Implemented: NDCC 65-04-17.1

## APPENDIX A

### NORTH DAKOTA WORKERS COMPENSATION BUREAU

#### PERMANENT MENTAL IMPAIRMENT RATING REPORT WORK SHEET

Since the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, does not provide a quantified method for assigning permanent impairment percentages under Chapter 14, "Mental and Behavioral Disorders," the evaluating physician shall utilize this form. When using this form, the evaluating physician shall:

- a. Become familiar with the content of the work sheet and develop an understanding of the percentages and categories listed in "I. Level of Permanent Mental Impairment" and the corresponding category definitions presented in "III. Category Definition Guidelines" found on Page 3;
- b. Enter the permanent mental category rating associated with each item in all sections of "II. Areas of Function" as it applies to the injured worker; and
- c. Enter a rating for the "Overall Permanent Impairment Rating" provided on Page 2. The "Overall Permanent Impairment Rating" must be based upon the categories provided on the attached "III. Category Definition Guidelines.
- d. All permanent impairment reports must include the cause of the impairment and must contain an apportionment if the impairment is caused by both work and non-work injuries or conditions.

**The various degrees of permanent impairment from "II. Areas of Function" on page 2 are not added, combined, or averaged. The overall mental rating should be based upon clinical judgment and the "category definitions" on the attachment to this form and be consistent with other chapters of the AMA guides.**

-PLEASE PHOTOCOPY AS NEEDED-

PERMANENT MENTAL IMPAIRMENT RATING

REPORT WORKSHEET

Patient Name \_\_\_\_\_

DOB \_\_\_\_\_

WC# \_\_\_\_\_

SSN \_\_\_\_\_

I. LEVELS OF PERMANENT MENTAL IMPAIRMENT

<u>Percent</u>	<u>Category</u>
0%	0. No. Permanent Impairment
1-5%	1. Minimal Permanent Impairment
6-15%	2. Mild Permanent Impairment
16-25%	3. Moderate Permanent Impairment
26-50%	4. Marked Permanent Impairment
51-75%	5. Extreme Permanent Impairment
76-100%	6. Maximum Permanent Impairment

II. AREAS OF FUNCTION

1. Activities of Daily Living

- \_\_\_\_\_ Self care and hygiene (dressing, bathing, eating, cooking)
- \_\_\_\_\_ Normal living postures/ambulation (sitting, lying, walking)
- \_\_\_\_\_ Travel (driving, riding, flying)
- \_\_\_\_\_ Non-specialized hand activities (grasping, lifting)
- \_\_\_\_\_ Sexual function (participating in usual sexual activities)
- \_\_\_\_\_ Sleep (restful sleep patterns)
- \_\_\_\_\_ Social and recreational activities (consider pre-injury activities of the patient)

2. Social Functioning

- \_\_\_\_\_ Get along with others without behavior extremes
- \_\_\_\_\_ Initiate social contacts, negotiate and compromise
- \_\_\_\_\_ Communicate clearly and effectively with others
- \_\_\_\_\_ Interact and actively participate in group activities

3. Thinking, Concentration, Persistence and Pace

- \_\_\_\_\_ Comprehend/follow simple commands
- \_\_\_\_\_ Apply common sense to carry out a task
- \_\_\_\_\_ Ask simple questions, request assistance when needed
- \_\_\_\_\_ Perform simple, routine, repetitive tasks
- \_\_\_\_\_ Ability to abstract or understand concepts
- \_\_\_\_\_ Maintain attention, concentration on a specific task and complete in a timely manner
- \_\_\_\_\_ Memory, immediate and remote
- \_\_\_\_\_ Judgement
- \_\_\_\_\_ Problem solving and conceptual reasoning ability
- \_\_\_\_\_ Perform daily tasks (including work) performed prior to the injury or illness at a reasonable pace
- \_\_\_\_\_ Ability to initiate decisions and perform planned action

4. Adaptation to Stress

- \_\_\_\_\_ Perform activities on schedule, be punctual
- \_\_\_\_\_ Adapt to limits or standards
- \_\_\_\_\_ Manage conflicts with others - negotiate, compromise
- \_\_\_\_\_ Set realistic goals, has good autonomous judgement

Overall Permanent Impairment  
Rating \_\_\_\_\_

Impairment Caused By  
Work \_\_\_\_\_

Physician: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

PERMANENT WORK-RELATED MENTAL IMPAIRMENT RATING  
REPORT WORKSHEET

### III. CATEGORY DEFINITION GUIDELINES

#### CATEGORY 0: 0% - No Permanent Impairment.

Mental symptoms arising from the work-related injury have been absent for the past month. ADLs are not affected. Functioning is good in social and work activities in all areas, generally satisfied with life, no more than everyday problems.

*Examples:* mild anxiety related to specific situations; occasional arguments with family members.

#### CATEGORY 1: 1-5% - Minimal Category of Permanent Impairment.

Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, minimally impair functioning. ADLs are only minimally affected. Functioning is minimally impaired in social or work settings.

*Examples:* temporary falling behind in work as a result of symptoms with little or no conflict with co-workers or peers. Activities of daily living are only minimally affected.

#### CATEGORY 2: 6-15% - Mild Category of Permanent Impairment.

Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, are mildly impairing. ADLs are mildly disrupted. Functioning shows mild permanent impairment in social or work activities. Permanent impairment is compatible with most useful functions.

*Examples:* occasionally misses work or reduced efficiency as a result of one or more symptoms; mild, intermittent conflicts with co-workers or peers; depressed mood, mild insomnia, generally functioning pretty well, has some meaningful interpersonal relationships.

#### CATEGORY 3: 16-25% - Moderate Category of Permanent Impairment.

Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, are moderately impairing. ADLs are moderately disrupted. Functioning shows moderate permanent impairment. Activities sometimes need direction or supervision.

*Examples:* frequent conflicts with co-workers or frequently misses work as a result of one or more symptoms; difficulties in interpersonal relationships, has few friends.

#### CATEGORY 4: 26-50% - Marked Category of Permanent Impairment

Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, are seriously impairing. ADLs are seriously disrupted. Functioning shows serious difficulties in social or work activities.

*Examples:* disorganized thinking, frequent suicidal ideations, cognitive deficits, usually unable to keep a full-time job without direction or supervision; work setting requires significant structure due to the multiple symptoms.

#### CATEGORY 5: 51-75% - Extreme Category of Permanent Impairment

Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, are incapacitating. At times, ADLs require structuring. Functioning is quite poor, unsafe in work settings, at times requires hospitalization or fulltime supervision. Most activities require directed care.

*Examples:* include moderate to severe dementia, bizarre and inappropriate behavior; significantly socially isolated.

#### CATEGORY 6: 76-100% - Maximum Category of Permanent Impairment

This impairment level precludes useful functioning in all areas. These individuals are generally appropriate for institutionalized settings, if available. All activities require directed care.

*Examples:* organic brain disorder from a close head injury with intractable psychotic symptoms.

## CHAPTER 92-01-03

### 92-01-03-01. History and functions of the workers'-adviser program office of independent review.

1. **History.** Legislation enacting the workers'-adviser-program office of independent review was passed in 1995 and is codified as North Dakota Century Code section 65-02-27. The legislation took effect on August 1, 1995.
2. **Functions.** The program has been developed to educate and provide assistance to injured employees in the workers' compensation system. The goal is to resolve claims disputes in a timely and professional manner. If an employee has a ~~complaint--concerning~~ concern with a claim, the employee may contact the workers'-adviser--program office of independent review and request assistance.

**History:** Effective April 1, 1996; amended effective May 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

### 92-01-03-02. **Definitions.** In this chapter:

1. "Act" means the North Dakota Workers Compensation Act.
2. "Advocate" means a person employed by the program to assist a claimant in a disputed claim.
3. "Attempt to resolve" means a prompt, active, honest, good-faith effort by the claimant to settle disputes with the bureau, through the program.
- 3- 4. "Benefits" means an obligation of the bureau to provide a claimant with assistance as required by the Act.
- 4- 5. "Bureau" means the North Dakota workers compensation bureau, or the director, or any department heads, assistants, or employees of the bureau designated by the director to act within the course and scope of their employment in administering the policies, powers, and duties of the Act.
6. "Certificate of completion" means the form sent to the claimant when the program closes its file, which acknowledges the claimant made a good-faith effort to resolve the dispute.
- 5- 7. "Claimant" means an employee who has filed a claim for benefits with the bureau.

8. "Constructive denial" occurs when sixty days have passed since all elements of filing under subsection 2 of section 92-01-02-48 have been satisfied, but the bureau has not made the decision to accept or deny the claim.
- 6: 9. "Disputed claim" means a challenge to an order issued by the bureau.
- 7: ~~"Field office" means a regional office of the workers' adviser program.~~
- 8: ~~"Informal benefit review conference" means a meeting among interested parties, in person or by telephone, which is intended to facilitate the resolution of disputes in a cooperative manner.~~
- 9: 10. "Interested party" means any of the following:
- a. The claimant.
  - b. The claims analyst assigned to that claimant's claim.
  - c. A claims supervisor.
  - d. The claimant's employer or immediate supervisor.
  - e. The claimant's treating doctor.
  - f. A member of the bureau's legal department.
  - g. Any other person the worker-adviser advocate determines appropriate.
11. "Notice of noncompliance" means the form sent when the program closes its file and the claimant has not made a good-faith effort to resolve the dispute.
- 10: 12. "Order" means an administrative order issued pursuant to North Dakota Century Code chapter 28-32 or section 65-01-16.
- 11: 13. "Program" means the ~~workers' adviser program~~ office of independent review.
- 12: 14. ~~"Worker adviser" means a person employed by the program to assist a claimant in a disputed claim.~~ "Vocational consultant's report" means the report issued by the rehabilitation consultant outlining the most appropriate rehabilitation option identified for the claimant.

History: Effective April 1, 1996; amended effective May 1, 2000.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-27

92-01-03-03. Request for assistance - Timely request for consideration or rehearing. A claimant shall request assistance with the resolution of a dispute that arises from an order must-be-made in writing within thirty days from the date of service of the order is-issued-to-the-claimant. An oral request is sufficient to toll the statutory time limit for requesting reconsideration--or rehearing if that request is followed by a written request for assistance which is received by the program within ten days after the oral request was made.

**History:** Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

**92-01-03-04. Procedure for dispute resolution.**

1. A claimant may contact the program for assistance with any issue-or-dispute at any time. The claimant shall contact the workers'-adviser program to request assistance with a dispute arising from an order within thirty days of the date of service of the order is-issued. The claimant may also contact the program for assistance when a claim has been constructively denied or when a vocational consultant's report is issued. A claimant must make an initial request in writing for assistance with an order, a constructively denied claim, or a vocational consultant's report.
2. In an attempt to resolve the dispute, the worker-adviser advocate may contact any interested parties. After oral or written contact has been made with the appropriate interested parties, the worker-adviser advocate will attempt to accomplish a mutually agreeable resolution of the dispute between the bureau and the claimant. The worker-adviser advocate may facilitate the discussion of the dispute but may not modify a decision issued by the bureau.
3. If-the-dispute-is-not-resolved,-the-case-may-be-assigned-to-an informal-benefits-conference.--The-worker-adviser-will--remain in--contact--with--all--interested--parties-until-the-informal benefits-conference-is-held.
4. If a claimant has attempted to resolve the dispute and an agreement cannot be reached, a program-completion-form-will-be completed--by--the--worker--adviser the advocate shall issue a certificate of completion. The worker-adviser advocate will serve send the program--completion--form--on certificate of completion to the claimant and will advise inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant must shall file a request for rehearing with the bureau's legal department

within thirty days after the ~~program---completion---form~~  
certificate of completion is mailed.

4. If a claimant has not attempted to resolve the dispute, the program shall issue a notice of noncompliance. The advocate shall send the notice of noncompliance to the claimant and shall inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the bureau's legal department within thirty days after the notice of noncompliance is mailed.
5. If an agreement is reached, a written copy of that agreement will be sent to the bureau's legal department for the drafting of an order or other legal document based upon the agreement.
6. The program will take complete action within thirty days from the date that the program receives a claimant's request for assistance was--received--by--the--program--from--the--claimant. This timeframe can be extended if the advocate is in the process of obtaining additional information.

**History:** Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

**92-01-03-05. Informal benefit review conference - Notice.** ~~If a dispute is assigned for an informal benefit review conference, the program shall provide written notice at least ten days prior to the conference to each interested party. The notice must include the date, time, and place of the conference. The ten-day notice may be waived upon agreement of the parties. The program shall provide a written specification of the issues to be considered. Each party will have an opportunity to present additional information. The informal benefit review conference will be held at the office of the program or at a place agreed upon by the parties. Any party may attend the conference by telephone.~~ Repealed effective May 1, 2000.

**History:** Effective April 1, 1996.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

**TITLE 93**

**Private Investigative and Security Board**



**MAY 2000**

**STAFF COMMENT:** Chapter 93-02-01.1 contains all new material and is not underscored so as to improve readability.

**ARTICLE 93-02**

**PRIVATE INVESTIGATIVE AND SECURITY SERVICES**

Chapter	
93-02-01	Private Investigative Services [Repealed]
93-02-01.1	Private Investigative Services
93-02-02	Private Security Services [Repealed]
93-02-02.1	Private Security Services
93-02-03	General Rules

**CHAPTER 93-02-01**

**PRIVATE INVESTIGATIVE SERVICES**

[Repealed effective May 1, 2000]

**CHAPTER 93-02-01.1**  
**PRIVATE INVESTIGATIVE SERVICES**

Section	
93-02-01.1-01	Qualifications for Individuals Providing Private Investigative Services
93-02-01.1-02	Licensing of Individuals Providing Private Investigative Services
93-02-01.1-03	Licensing of Detective Agencies
93-02-01.1-04	Registration of Employees of Detective Agencies
93-02-01.1-05	Armed Personnel - Possession and Use of Firearms in the Course of Providing Private Investigative Services
93-02-01.1-06	Equivalency
93-02-01.1-07	Prohibitions
93-02-01.1-08	Surety Requirements
93-02-01.1-09	License - Posting
93-02-01.1-10	Issuance of Pocket Cards
93-02-01.1-11	Change in Ownership or Other Application Information
93-02-01.1-12	Examination Restrictions

**93-02-01.1-01. Qualifications for individuals providing private investigative services.** To receive and maintain any license or registration from the board to provide private investigative services, an individual first must:

1. Be at least eighteen years of age.
2. Be a high school graduate or hold the equivalent of a high school diploma.
3. Have not been convicted or adjudged guilty in any jurisdiction of one of the following offenses or its equivalent in another jurisdiction, including juvenile adjudications that the individual has engaged in similar conduct: any felony; any class A or B misdemeanor involving an act of violence or intimidation as defined in North Dakota Century Code chapters 12.1-16 through 12.1-25 and chapter 12.1-31.2, or involving controlled substances as defined in North Dakota Century Code chapter 19-03.1; any offense involving theft as defined in North Dakota Century Code chapter 12.1-23, including shoplifting; or any other offense that must be reported to the North Dakota bureau of criminal investigation under North Dakota Century Code section 12.1-32-15. This subsection does not prohibit the board from issuing a license or registration to an individual if the board determines the offense does not have a direct bearing upon the individual's ability to provide private investigative services to the public and the individual has been sufficiently rehabilitated pursuant to the provisions of North Dakota Century Code section 12.1-33-02.1, or a full pardon has been granted.
4. Be free of mental condition or defect that would interfere with the individual's ability to provide services in a professional and competent manner.

5. Have not committed an act that the board determines is indicative of bad moral character and which has a direct bearing on the applicant's ability to serve the public, including offenses other than those listed in subsection 3.

The requirements in this section are in addition to any other qualifications established in this chapter. Each individual who is required to meet the qualifications of this section has a continuing duty to notify the board of any conviction or adjudication of guilt of an offense described in subsection 3 within fourteen days of the conviction or adjudication. For individuals who are licensed or registered by the board on May 1, 2000, or who are officers or owners of at least a ten percent interest in a licensed agency on May 1, 2000,

this section applies only to convictions or adjudications of guilt which occur after May 1, 2000.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-06

**93-02-01.1-02. Licensing of individuals providing private investigative services.**

1. An individual providing private investigative services must obtain a license from the board to provide those services unless the individual is registered as an employee of an agency that is licensed under this chapter and is providing those services within the scope of the individual's employment with the agency. This section does not apply to individuals who are exempt from the board's jurisdiction under North Dakota Century Code section 43-30-02.
2. An individual is qualified to be licensed to provide private investigative services if the individual has passed an examination conducted by or under the supervision of the board within the twelve months preceding the date of the individual's application for the license and has provided two thousand hours of private investigative services as a registered employee of a detective agency. The experience requirement in this subsection does not apply to an individual who holds a license on May 1, 2000, unless the individual's license lapses and is not renewed within one year pursuant to section 93-02-03-03.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-06

**93-02-01.1-03. Licensing of detective agencies.** Any individual or entity hiring another person to perform private investigative

services must obtain a detective agency license. An individual who applies for an agency license must be currently licensed in this state to provide private investigative services. An entity that applies for an agency license must have at least one owner, member, or partner who is licensed to provide private investigative services and who will be responsible for all agency personnel providing those services. All nonlicensed officers and owners of at least a ten percent interest in the entity must be listed on the application and meet the qualifications in section 93-02-01.1-01.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-09

**93-02-01.1-04. Registration of employees of detective agencies.**

1. For the purposes of this chapter, the terms "employee" and "employment" include any individual performing any private investigative services on a contractual basis for an agency licensed under this chapter.
2. An individual providing private investigative services as an employee of a detective agency who is not licensed to provide those services must obtain a registration from the board.
3. A detective agency may not employ an unregistered or unlicensed person to provide private investigative services on behalf of the agency. A person employed by a detective agency who does not provide any private investigative services need not be registered or licensed.
4. A detective agency is responsible for any activities of its licensed or registered employees and may be subject to administrative action by the board for the activities of its licensed or registered employees.
5. A registered employee may not provide private investigative services unless the employee is under the supervision of an individual who is licensed to provide private investigative services.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-16

**93-02-01.1-05. Armed personnel - Possession and use of firearms in the course of providing private investigative services.** It is unlawful for any individual, including agency personnel, to carry a firearm while providing private investigative services unless the individual carrying the firearm:

1. Is in compliance with all existing state and federal laws, including certification and licensing when necessary;
2. Has completed the same requirements for firearms training as is required for North Dakota peace officers; and
3. Has provided at least one thousand hours of private investigative or private security services.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**93-02-01.1-06. Equivalency.** The board may waive part of or all of any training or experience requirements for individuals licensed or registered by the board based upon equivalent training or experience in any combination of the following: private security or private investigation in another state with equal or similar requirements; law enforcement in any jurisdiction with equal or similar requirements; military investigation; proprietary investigation, provided that equal or similar requirements for training as required by this chapter were met; or equivalent training in any educational institution in relevant subject matters.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**93-02-01.1-07. Prohibitions.**

1. An individual, while providing private investigative services, may not:
  - a. Wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification;
  - b. Make or utter any statement; or
  - c. Use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance;

which could or might reasonably lead the general public to believe or assume that the individual has any police-type powers or that the individual or vehicle is associated in any way with a governmental law enforcement agency or other governmental agency. Examples of prohibited conduct include use of the word "police", the great seal of the state of North Dakota, or the seal of any political subdivision; or use of any type of common or customary military rank.

2. An individual licensed or registered by the board under this chapter, including the holder of an agency license, may not be employed full time or part time in any capacity wherein such individual has any police-type powers or access to any official law enforcement records.
3. An individual licensed or registered by the board under this chapter may not solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of, any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.
4. As used in this section, positions with police-type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.
5. Expert witnesses, including law enforcement officials, are exempt from being licensed or registered to provide private investigative services when used to review or research information that has been gathered or a field review of the scene is conducted, so long as there is not personal contact, such as interviewing witnesses, suspects, or victims or the use of confidential law enforcement information or records.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 12.1-13-04

**93-02-01.1-08. Surety requirements.**

1. Before a license to provide private investigative services can be issued to any individual or agency, the applicant must file with the board a bond, irrevocable letter of credit, or certificate of insurance executed by the applicant and by a surety company or insurance company in the sum of a ten thousand dollar bond, ten thousand dollar letter of credit, or one hundred thousand dollars of general liability with errors and omissions insurance.
2. The bond, irrevocable letter of credit, or certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents and employees, and for the full protection of any person who deals with the applicant or the applicant's agents and employees. The bond, irrevocable letter of credit, or

certificate of insurance must provide that any person injured by the breach of the conditions of the bond, irrevocable letter of credit, or insurance policy may bring an action on that bond, irrevocable letter of credit, or insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the bond, irrevocable letter of credit, or insurance policy for all damages may, in no event, exceed the sum of the bond, irrevocable letter of credit, or insurance policy. The surety or insurance underwriter may cancel the bond or policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**93-02-01.1-09. License - Posting.** Each individual who, or agency that, is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office. An agency need not display the licenses of all the individual licensees employed by the agency. If the board revokes, suspends, or disapproves renewal of any license, the board may require the holder of the license to return the license to the board within fourteen days.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**93-02-01.1-10. Issuance of pocket cards.**

1. To each individual licensed or registered by the board, the board shall issue a laminated pocket card. The board will not issue a pocket card to an individual performing private investigative services for a detective agency on a contractual basis if that individual is already licensed as a private investigator.
2. When a registered employee of a detective agency terminates employment or a contract with the agency, that employee shall return the pocket card to the agency immediately after termination. Within seven days after receiving the pocket card of the terminated employee, the agency shall mail or deliver the pocket card to the board for cancellation, with a letter from the holder of the agency license stating the date

the registered employee was terminated and the date the agency received the terminated individual's card.

3. If the board revokes, suspends, or disapproves the renewal of a license or registration of any individual, the board may require the individual to return the individual's pocket card within fourteen days.
4. If the board revokes, suspends, or disapproves renewal of a detective agency license, the board may require the agency to

return the pocket cards of all its registered employees within fourteen days of the request by the board.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**93-02-01.1-11. Change in ownership or other application information.** An agency license is not transferable. A licensed detective agency must notify the board in advance of any change in ownership of the agency and a new license application form must be submitted to the board by the new owner or owners. Payment of license fees is nontransferable. Each agency licensed by the board has a continuing duty to notify the board about any changes in information provided in the license application form within fourteen days of the change.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**93-02-01.1-12. Examination restrictions.** Any applicant for a license to provide private investigative services who fails to pass the first examination required by the board may apply for retesting no sooner than thirty days after notice of failure. Upon failure of a second and subsequent examination, the applicant may apply for retesting again after a one-year waiting period.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04, 43-30-16

**CHAPTER 93-02-02**

**PRIVATE SECURITY SERVICES**

[Repealed effective May 1, 2000]

**STAFF COMMENT:** Chapter 93-02-02.1 contains all new material and is not underscored so as to improve readability.

**CHAPTER 93-02-02.1  
PRIVATE SECURITY SERVICES**

Section	
93-02-02.1-01	Qualifications for Individuals Providing Private Security Services
93-02-02.1-02	Licensing of Individuals Providing Private Security Services
93-02-02.1-03	Licensing of Private Security Agencies
93-02-02.1-04	Registration of Employees of Private Security Agencies
93-02-02.1-05	Qualifications for Apprentice Security Officers
93-02-02.1-06	Qualifications for Security Officers
93-02-02.1-07	Qualifications for Commissioned Security Officers
93-02-02.1-08	Armed Personnel - Possession and Use of Firearms in the Course of Providing Private Security Services
93-02-02.1-09	Qualifications for Trainers
93-02-02.1-10	Equivalency
93-02-02.1-11	Prohibitions
93-02-02.1-12	Surety Requirements
93-02-02.1-13	License - Posting
93-02-02.1-14	Issuance of Pocket Cards
93-02-02.1-15	Change in Ownership or Other Application Information
93-02-02.1-16	Examination Restrictions

**93-02-02.1-01. Qualifications for individuals providing private security services.** To receive and maintain any license or registration from the board to provide private security services, an individual first must:

1. Be at least eighteen years of age.
2. Be a high school graduate or hold the equivalent of a high school diploma.
3. Have not been convicted or adjudged guilty in any jurisdiction of one of the following offenses or its equivalent in another jurisdiction, including juvenile adjudications that the individual has engaged in similar conduct: any felony; any class A or B misdemeanor involving an act of violence or intimidation as defined in North Dakota Century Code chapters 12.1-16 through 12.1-25 and chapter 12.1-31.2, or involving controlled substances as defined in North Dakota Century Code chapter 19-03.1; any offense involving theft as defined in North Dakota Century Code chapter 12.1-23, including shoplifting; or any other offense that must be reported to the North Dakota bureau of criminal investigation under North

Dakota Century Code section 12.1-32-15. This subsection does not prohibit the board from issuing a license or registration to an individual if the board determines the offense does not have a direct bearing upon the individual's ability to provide private security services to the public and the individual has been sufficiently rehabilitated pursuant to the provisions of North Dakota Century Code section 12.1-33-02.1, or a full pardon has been granted.

4. Be free of mental condition or defect that would interfere with the individual's ability to provide services in a professional and competent manner.
5. Have not committed an act that the board determines is indicative of bad moral character and which has a direct bearing on the applicant's ability to serve the public, including offenses other than those listed in subsection 3.

The requirements in this section are in addition to any other qualifications established in this chapter. Each individual who is required to meet the qualifications of this section has a continuing duty to notify the board of any conviction or adjudication of guilt of an offense described in subsection 3 within fourteen days of the conviction or adjudication. For individuals who are licensed or registered by the board on May 1, 2000, or who are officers or owners of at least a ten percent interest in a licensed agency on May 1, 2000, this section applies only to convictions or adjudications of guilt which occur after May 1, 2000.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-06

**93-02-02.1-02. Licensing of individuals providing private security services.**

1. An individual providing private security services must obtain a license from the board to provide those services unless the individual is registered as an employee of an agency that is licensed under this chapter and is providing those services within the scope of the individual's employment with the agency. This section does not apply to individuals who are exempt from the board's jurisdiction under North Dakota Century Code section 43-30-02.
2. An individual is qualified to be licensed to provide private security services if the individual is currently a commissioned security officer and has passed an examination conducted by or under the supervision of the board within the

twelve months preceding the date of the individual's application for the license.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-06

**93-02-02.1-03. Licensing of private security agencies.** Any individual or entity hiring another person to perform private security services must obtain a private security agency license. An individual who applies for a private security agency license must be currently licensed in this state to provide private security services. An entity that applies for a private security agency license must have at least one owner, member, or partner who is licensed to provide private security services and who will be responsible for all agency personnel providing those services. All nonlicensed officers and owners of at least a ten percent interest in the entity must be listed on the application and meet the qualifications in section 93-02-02.1-01.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-04. Registration of employees of private security agencies.**

1. For the purposes of this chapter, the terms "employee" and "employment" include any individual performing any private security services on a contractual basis for an agency licensed under this chapter.
2. An individual providing private security services as an employee of a private security agency who is not licensed to provide those services must obtain a registration from the board as an apprentice security officer, security officer, or commissioned security officer.
3. A private security agency may not employ an unregistered or unlicensed person to provide private security services on behalf of the agency. A person employed by a private security agency who does not provide any private security services need not be registered or licensed.
4. A private security agency is responsible for any activities of its licensed or registered employees and may be subject to administrative action by the board for the activities of its licensed or registered employees.
5. A registered employee may not provide private security services unless the employee is under the supervision of an

individual who is licensed to provide private security services.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-16

**93-02-02.1-05. Qualifications for apprentice security officers.**

To qualify for registration as an apprentice private security officer, an individual:

1. Must complete, within thirty days after being registered with the board, a minimum of sixteen hours of classroom instruction relating to the provision of private security services and a minimum of sixteen hours of field training. The field training must be supervised either by a security officer who has a minimum of two thousand hours of active service in that grade or equivalent combination of training and experience as defined in section 93-02-02.1-10 or by a commissioned security officer. The training must be at a ratio of no more than four trainees to one officer.
2. Until the apprentice private security officer has fulfilled the requirements in this section, the apprentice may only provide private security services under the direct, onsite supervision of a security officer or commissioned security officer employed by the private security agency.
3. A registration under this section will not be issued after the expiration of a temporary registration issued under North Dakota Century Code section 43-30-05.1 unless the apprentice security officer provides sufficient proof to the board of the completion of the instruction and field training requirements in this section.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-06. Qualifications for security officers.** To qualify for registration as a security officer, an individual must provide a minimum of one thousand hours of private security service as a registered apprentice security officer and complete an additional thirty-two hours of classroom instruction as required by the board.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-07. Qualifications for commissioned security officers.**

To qualify for registration as a commissioned security officer, an individual must provide three thousand hours of private security service as a registered security officer, in addition to at least one thousand hours as an apprentice security officer, and complete an additional eighty hours of classroom instruction as required by the board.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-08. Armed personnel - Possession and use of firearms in the course of providing private security services.** It is unlawful for any individual, including agency personnel, to carry a firearm while providing private security services unless the individual carrying the firearm:

1. Is in compliance with all existing state and federal laws, including certification and licensing when necessary;
2. Has completed the same requirements for firearms training as is required for North Dakota peace officers; and
3. Achieved at least the rank of security officer as defined in section 93-02-02.1-06 and been issued an armed private security certificate.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-09. Qualifications for trainers.** Classroom instruction required of apprentice security officers, security officers, or commissioned security officers must be conducted by trainers certified by the board. To be certified as a trainer, an individual must meet at least one of the following requirements:

1. Two thousand hours of active service as a security officer;
2. Equivalent combination of training and experience as defined in section 93-02-02.1-10;
3. One year of experience as an instructor in a relevant discipline at an educational institution or educational agency;
4. A degree from any educational institution in a nonrelevant discipline plus at least a minor in a relevant discipline; or

5. Certification from an accredited vocational education provider.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**93-02-02.1-10. Equivalency.** The board may waive part of or all of any training or experience requirements for individuals licensed or registered by the board based upon equivalent training or experience in any combination of the following: private security or private investigation in another state with equal or similar requirements; law enforcement in any jurisdiction with equal or similar requirements; military security; proprietary security, provided that equal or similar requirements for training as required by this chapter were met; or equivalent training in any educational institution in relevant subject matters.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**93-02-02.1-11. Prohibitions.**

1. An individual, while providing private security services, may not:
  - a. Wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification;
  - b. Make or utter any statement; or
  - c. Use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance;

which could or might reasonably lead the general public to believe or assume that the individual has any police-type powers or that the individual or vehicle is associated in any way with a governmental law enforcement agency or other governmental agency. Examples of prohibited conduct include use of the word "police", the great seal of the state of North Dakota, or the seal of any political subdivision; or use of any type of common or customary military rank.

2. An individual licensed by the board under this chapter, including the holder of an agency license, may not be employed full time or part time in any capacity wherein such individual has any police-type powers or access to any official law enforcement records.

3. An individual licensed by the board under this chapter may not solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of, any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.
4. As used in this section, positions with police-type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 12.1-13-04

#### **93-02-02.1-12. Surety requirements.**

1. Before a license to provide private security services can be issued to any individual or agency, the applicant must file with the board a bond, irrevocable letter of credit, or certificate of insurance executed by the applicant and by a surety company or insurance company in the sum of a ten thousand dollar bond, ten thousand dollar letter of credit, or one hundred thousand dollars of general liability with errors and omissions insurance.
2. The bond, irrevocable letter of credit, or certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents and employees, and for the full protection of any person who deals with the applicant or the applicant's agents and employees. The bond, irrevocable letter of credit, or certificate of insurance must provide that any person injured by the breach of the conditions of the bond, irrevocable letter of credit, or insurance policy may bring an action on that bond, irrevocable letter of credit, or insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the bond, irrevocable letter of credit, or insurance policy for all damages may, in no event, exceed the sum of the bond, irrevocable letter of credit, or insurance policy. The surety or insurance underwriter may cancel the bond or policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability

for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04

**93-02-02.1-13. License - Posting.** Each individual who, or private security agency that, is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office. An agency need not display the licenses of all the individual licensees employed by the agency. If the board revokes, suspends, or disapproves renewal of any license, the board may require the holder of the license to return the license to the board within fourteen days.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**93-02-02.1-14. Issuance of pocket cards.**

1. To each individual licensed or registered by the board, the board shall issue a laminated pocket card.
2. When a registered employee of a private security agency terminates employment or a contract with the agency, that employee shall return the pocket card to the agency immediately after termination. Within seven days after receiving the pocket card of the terminated employee, the agency shall mail or deliver the pocket card to the board for cancellation, with a letter from the holder of the agency license stating the date the registered employee was terminated and the date the agency received the terminated individual's card.
3. If the board revokes, suspends, or disapproves the renewal of a license or registration of any individual, the board may require the individual to return the individual's pocket card within fourteen days.
4. If the board revokes, suspends, or disapproves renewal of a private security agency license, the board may require the agency to return the pocket cards of all its registered employees within fourteen days of the request by the board.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**93-02-02.1-15. Change in ownership or other application information.** A private security agency license is not transferable. A licensed agency must notify the board in advance of any change in ownership of the agency and a new license application form must be submitted to the board by the new owner or owners. Payment of license fees is nontransferable. Each agency licensed by the board has a continuing duty to notify the board about any changes in information provided in the license application form within fourteen days of the change.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-05

**93-02-02.1-16. Examination restrictions.** Any applicant for a license to provide private security services who fails to pass the first examination required by the board may apply for retesting no sooner than thirty days after notice of failure. Upon failure of a second and subsequent examination, the applicant may apply for retesting again after a one-year waiting period.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-04, 43-30-16

## CHAPTER 93-02-03

**93-02-03-01. Powers of private investigative and security board.**  
The private investigative and security board shall:

1. Conduct informal inquiries concerning grievances, license revocations, license suspensions, and violations of state law relating to the providing of private investigative services and private security services in North Dakota. The chairman of the private investigative and security board, or a designee, shall preside over all inquiries. The board may call witnesses for the purpose of inquiry but has no powers of subpoena. The board may take appropriate administrative action as necessary.
2. Perform all other functions and duties as prescribed by the governor.

All meetings, for whatever purpose, conducted by the private investigative and security board must be at the call of the chairman of the private investigative and security board, or a designee, with approval by the governor. Repealed effective May 1, 2000.

**History:** Effective March 1, 1990.  
**General Authority:** NDCC-43-30-04  
**Law Implemented:** NDCC-43-30-03

**93-02-03-02. License fees - Proration - Refunds - Dual licensure.**  
License fees for providing private investigative services and private security services may be prorated on a quarterly basis for each period the license is in effect. However, no license renewals may will not be issued on a prorated basis, and no refunds may be made on license fees paid. Any agency providing both private investigative services and private security services shall meet all of the requirements for licensing as a private security agency and a detective agency.

**History:** Effective March 1, 1990; amended effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-11

**93-02-03-03. Renewal of licenses and registrations.**

1. Licenses and registrations issued by the board expire on September thirtieth of each odd-numbered year.
2. Every holder of a license as a private investigator, detective agency, provider of private security services, or private security agency individual or agency who previously held a license or registration issued by the board and whose license

or registration has expired may have the same restored immediately upon payment of all lapsed renewal fees and any applicable late fees; provided, however, that not more than one year has elapsed since the date of expiration, and provided that this the individual or agency has not provided private investigative or private security services during the time in which the license or registration was expired.

3. This section does not relieve any person from criminal prosecution for engaging in practice or providing services without a license as required by North Dakota Century Code chapter 43-30. Once a license or registration has lapsed, the individual or agency who held the license or registration may not provide private investigative or private security services until the license or registration is renewed or until a new license or registration is issued.
4. Any person--not--paying--the individual or agency who fails to renew a lapsed license or registration and who fails to pay all lapsed renewal fees and late fees within the time required by this section must be required to reapply for a new license or registration and meet all the requirements for licensing or registration, including a state and nationwide criminal history record check.

**History:** Effective March 1, 1990; amended effective May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-11

~~93-02-03-04. Grandfather clause. No--person;--private-security agency;--or--detective--agency--previously--licensed--to--provide--private security--services--or--private--investigative--services--may--be--required--to--apply--for--a--new--license--to--provide--those--services;--unless--that--person's or--agency's--license--has--been--suspended;--revoked;--or--allowed--to--lapse--for a--period--of--time--more--than--one--year;--However;--any--such--person;--private security--agency;--or--detective--agency--previously--licensed--shall--meet--all the--other--applicable--requirements--of--chapters--93-02-01;--93-02-02;--and 93-02-03. Repealed effective May 1, 2000.~~

**History:** Effective March 1, 1990.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-06

**93-02-03-05. Suspension, revocation, or refusal to renew license.** In addition to the causes for suspension, revocation, or refusal to renew a license listed in North Dakota Century Code section 43-30-23 43-30-12, the board may either refuse to renew, suspend, revoke, or place on probationary status any licensee, or issue a letter of reprimand for any of the following causes:

1. Failure or refusal to furnish information required by statute, rule, or request of the board.
2. Making or causing to be made any false entry or written statement of fact in an application for license or registration, in reports, or in other written information to be filed with the board.
3. Fraud in the taking of examination for licensing.
4. Carrying a weapon in violation of any statute or rule specifically regulating the carrying of weapons by private investigators or private security personnel, or in violation of any state and federal laws.
5. Violation--of-sections-93-02-01-07-and-93-02-02-14: Providing private investigative or private security services under a lapsed license or registration.
6. Violation of any of the rules regulating-the-provision-of private-investigative-services-or--private--security--services (chapters-93-02-01,-93-02-02,-and-93-03-03) in this article.
7. Insufficient supervision of registered employees by the employing agency, by the licensee who is responsible for agency personnel under section 93-02-01.1-03 or 93-02-02.1-03, or by any other licensee who is responsible for supervising the employee's work under section 93-02-01.1-04 or 93-02-02.1-04.
8. Unprofessional conduct, which includes engaging in criminal activity and providing incompetent services.

**History:** Effective March 1, 1990; amended effective May 1, 1998; May 1, 2000.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-12

93-02-03-06. Fees - Amount - Late fees. The board charges the following fees:

1. An individual shall pay a fee of one hundred dollars to take the examination to become licensed to provide investigative or private security services.
2. An individual shall pay a fee of one hundred fifty dollars to receive an initial license or renew the individual's license to provide private investigative or private security services.

3. An individual or entity shall pay a fee of one hundred dollars to apply for a license to operate a private security or detective agency.
4. An individual or entity shall pay a fee of three hundred dollars to receive an initial license or renew a license to operate a private security or detective agency.
5. An individual shall pay a fee of twenty-five dollars to receive a private security training certificate.
6. An individual shall pay an annual fee of twenty-five dollars to receive an armed private security certificate. Armed private security certificates expire on September thirtieth of each year.
7. An individual or entity shall pay a fee of twenty dollars to obtain a duplicate license.
8. An individual shall pay a fee of twenty dollars to obtain an initial registration to provide private investigative or private security services. There is no charge for renewing an individual's registration to provide private investigative or private security services, but a late fee of ten dollars must be paid for each month the renewal is late.

**History:** Effective May 1, 2000.  
**General Authority:** NDCC 43-30-04  
**Law Implemented:** NDCC 43-30-16