

NORTH DAKOTA ADMINISTRATIVE CODE

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

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TITLE 3
ACCOUNTANCY, BOARD OF

APRIL 2024

CHAPTER 3-01-01

3-01-01-01. Organization of the state board of accountancy.

1. **History.** The state board of accountancy was created in 1913 and originally supervised certified public accountants. The 1975 Public Accountancy Act, codified as North Dakota Century Code chapter 43-02.1, completely revamped the accountancy laws and added licensed public accountants to the board's jurisdiction. The Accountancy Act of 1993 replaced North Dakota Century Code chapter 43-02.1 with chapter 43-02.2.
2. **Legislative intent.** It is the policy of this state, and the purpose of the Accountancy Act of 1993 to promote the reliability of information used for guidance in financial transactions or for accounting for or assessing the financial status or performance of enterprises.
3. **Board membership.** The board consists of five members appointed by the governor. There are five certified public accountants on the board.
4. **Board organization.** The board shall elect from its members a president and a secretary-treasurer, and any other officers the board may require. The officers shall take office immediately following election and shall serve for one year, and shall be eligible for reelection. The president shall preside at meetings of the board; the secretary-treasurer shall preside in the absence of the president.
5. **Compensation of board members.** Each member of the state board of accountancy shall receive compensation of three hundred dollars for each day, or portion thereof, spent in official business of the board, not to exceed two thousand dollars per fiscal year.
6. **Executive director.** The board is authorized to employ an executive director. The executive director is responsible for keeping the board's records and administering the board's activities.

History: Amended effective August 1, 1981; September 1, 1983; October 1, 1983; July 1, 1991; March 1, 1995; July 1, 2008; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~28-32-02.1~~[28-32-02](#), 43-02.2-03

Law Implemented: NDCC ~~28-32-02.1~~[28-32-02](#), 43-02.2-03

CHAPTER 3-01-02

3-01-02-01. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Accountant" means either a certified public accountant (CPA) or a licensed public accountant (LPA), except as provided in section 3-01-02-02.
2. "Accounting concentration" means twenty-four semester credits or equivalent of accounting courses, plus twenty-four credits of other business courses. Principles of accounting or equivalent courses do not count toward the required accounting or business courses. ~~Up to three credits of economics credits may be included in the other business courses.~~
3. "AICPA" means the American institute of certified public accountants.
4. "Bookkeeping" means the maintaining of financial records and preparation of tax returns. Bookkeeping does not include the preparation of any financial statement or similar such documents on which language similar to that utilized by certified public accountants or licensed public accountants is placed including compilation and review language.
5. "Enterprise" means any person, persons, or entity, whether or not organized for profit, for which an accountant provides services.
6. "Financial statements" means a presentation of financial data, including any accompanying notes, intended to show financial position at a point in time or changes in financial position for a period of time in accordance with generally accepted accounting principles or another comprehensive basis of accounting. Incidental financial data included in management advisory services, reports to support recommendations to a client, and tax returns and supporting schedules are not financial statements.
7. "NASBA" means the national association of state boards of accountancy.
8. "Practice of public accounting" does not include reviews conducted under peer review programs.

The terms "public practice", "practice", "practice of public accountancy", and "practice public accounting", shall be synonymous with the term "practice of public accounting".

History: Amended effective January 1, 1987; July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2003; July 1, 2006; July 1, 2008; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03

CHAPTER 3-01-03

3-01-03-01. Code of ethics.

Licensees must observe the code of professional conduct of the American institute of certified public accountants, with references to "member" being understood to apply to licensees. Licensees must also observe the codes of conduct of the general accounting office, the securities and exchange commission, and any other bodies, whenever they are relevant and applicable based on services performed by the licensee.

History: Effective July 1, 2008; amended effective April 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~43-02.2-04~~[43-02.2-03](#)

Law Implemented: NDCC 43-02.2-03

3-01-03-02. Firm ownership.

A minority of the ownership of a firm practicing public accountancy within this state may be held by noncertified public accountants or nonlicensed public accountants, but each such owner:

1. Must be an individual;
2. Must not serve as the principal executive officer of the firm;
3. Must not exercise authority over the performance of audit, review, compilation, or other attest services; and
4. Must not aid in the unauthorized practice of public accounting, or knowingly misrepresent facts, or commit any act discreditable to the accounting profession.

When any owner of a firm practicing public accounting within this state is convicted of a felony or other crime involving fraud or dishonesty, or is disciplined by a regulatory agency, that person's ownership in the firm must be fully divested within six months thereafter, if so directed by the board.

In the event of death or incapacity of a firm's sole owner, the firm may continue to operate under the owner's name and credential, for up to one year. The board may require firm supervision.

History: Effective July 1, 2008; amended effective April 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~43-02.2-04~~[43-02.2-03](#)

Law Implemented: NDCC ~~43-02.2-03~~[43-02.2-06](#)

3-01-03-03. Firm review.

Firms practicing public accounting are required to undergo a practice review conforming to the standards of the AICPA peer review program, or a program deemed comparable by the board. The board will not require such review more frequently than every three years, except in the case of quality concerns or the lack of timely review progress. A copy of the review report and letter of acceptance, plus any letters of comment and response issued, are to be submitted to the board when directed. When the review process reveals substantive quality concerns, the board may take various actions against the firm, such as requiring specific continuing education, preissuance report review, accelerated practice review, practice restrictions, and other measures.

History: Effective July 1, 2008; amended effective April 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~43-02.2-04~~[43-02.2-03](#)

Law Implemented: NDCC ~~43-02.2-03~~[43-02.2-06](#)

CHAPTER 3-02-01

3-02-01-02. Examinations - Passing conditions.

An applicant may take the examination sections individually and in any order. An applicant shall retain conditional credit for any section passed for ~~eighteen~~thirty months after the ~~test~~score ~~release~~ date. An applicant must pass all sections of the examination within a rolling ~~eighteen-month~~thirty-month period which begins on the ~~test~~score ~~release~~ date of the first section passed. In the event all sections of the examination are not passed within the rolling ~~eighteen-month~~thirty-month period, credit will expire for any section passed outside the ~~eighteen-month~~thirty-month period. The board may lengthen the ~~eighteen-month~~thirty-month period referenced above, in the event of extraordinary circumstances or substantial scoring delays.

History: Effective July 1, 1999; amended effective December 1, 2003; April 1, 2018; January 1, 2020; April 1, 2024.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-04

CHAPTER 3-02-02 FEES

Section

3-02-02-01	Examination Fees
3-02-02-02	Fee for Certificate Without Examination
3-02-02-03	Licensed Public Accountants' Fees [Repealed]
3-02-02-04	Certificate and License Annual Renewal Fees
3-02-02-04.1	Fee for Annual Firm Permit
3-02-02-05	Retired or Inactive Accountants
3-02-02-06	Change of Address Notification
3-02-02-07	Return of Suspended, Revoked, or Nonrenewal CPA Certificate or LPA License
3-02-02-08	Reinstatement Fee

3-02-02-01. Examination fees.

The following examination fees have been established by the board for the certified public accountants examination:

1. An application fee not to exceed two hundred dollars. ~~If the applicant has not passed the full examination by one year after the date of the applicant's last application, a reapplication fee not to exceed one hundred dollars will be required.~~
2. Applicants will also be required to pay testing-related fees as required by the national testing program, either to the board or a third party designated by the board. Unused testing fees may not be returned to the applicant, except in unusual situations approved by the board.

History: Amended effective July 1, 1981; July 1, 1985; July 1, 1987; July 1, 1991; March 1, 1995; September 1, 2001; December 1, 2003; July 1, 2005; April 1, 2018; April 1, 2024.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-04

3-02-02-04. Certificate and license annual renewal fees.

The annual renewal fee for every CPA and LPA shall be set by the board but not to exceed two hundred dollars. A CPA or LPA who registers and pays the annual renewal fee by July first through July thirty-first will be considered licensed during ~~that same~~ the period July first through June thirtieth. A CPA or LPA who fails to register or pay the renewal fee by ~~July thirty-first~~ June thirtieth shall pay a late filing fee not to exceed one hundred dollars in addition to the regular annual fee. If not paid by ~~August~~ July thirty-first, the certificate is deemed involuntarily relinquished and not renewed, and subject to return as specified in section 3-02-02-07, and subject to the reinstatement requirements of section 3-02-02-08. Individuals registered under the substantial equivalency provisions shall be required to file an annual renewal form and pay the annual renewal fee, plus the late filing fee if applicable.

History: Amended effective August 1, 1981; October 1, 1982; July 1, 1987; June 1, 1988; July 1, 1991; March 1, 1995; September 1, 1997; October 1, 1999; December 1, 2000; December 1, 2003; July 1, 2008; April 1, 2018; January 1, 2020; April 1, 2024.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, 43-02.2-04, 43-02.2-07

3-02-02-04.1. Fee for annual firm permit.

The annual fee for a firm permit may not exceed two hundred dollars. A late filing fee not to exceed one hundred dollars shall also be paid by a firm that fails to register or pay the annual firm permit fee by ~~July thirty-first~~ June thirtieth. If not renewed by ~~August~~ July thirty-first, the permit is deemed involuntarily relinquished and not renewed, and subject to the reinstatement requirements of section 3-02-02-08. A

firm shall register and pay a firm permit fee before commencing any activity that requires such a permit. Failure to register and pay the appropriate firm permit fees may result in the board proceeding to revoke, suspend, or refuse to renew the certificates and licenses of each of the firm's partners, officers, directors, shareholders, or owners.

History: Effective June 1, 1988; amended effective March 1, 1995; September 1, 1997; October 1, 1999; December 1, 2000; December 1, 2003; July 1, 2008; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, 43-02.2-06, 43-02.2-07

3-02-02-05. Retired or inactive accountants.

~~1.~~ Upon written request, retired status is available for a CPA or LPA who is no longer employed because of disability or retirement, ~~and for a CPA or LPA who is at least sixty years of age, and who performs no accounting, auditing, management, or financial advisory, consulting, bookkeeping, or tax services for a client or an employer's client while holding out to the public as a licensee in this state.~~ The certificate to practice as a CPA or license to practice as an LPA shall be designated retired and shall remain as such without payment of the annual fees required by this chapter. A retired certificate holder or licenseholder may not practice in this state but may use the title "certified public accountant, retired" or "licensed public accountant, retired" or the abbreviation "CPA, retired" or "LPA, retired", as applicable. A retired certificate holder or licenseholder must adhere to the code of ethics set forth in ~~article 3-04~~[section 3-01-03-01](#) but is not required to comply with continuing education regulations set forth in article 3-03.

~~2. A retired certificate holder or licenseholder may apply for reinstatement to practice at any time and will be reinstated to active practice as a CPA or LPA by paying the annual registration fee required for the year of application and by satisfying the board that all current requirements for continuing education have been met.~~ Upon written request, inactive status is available for a CPA or LPA who performs no compensated accounting, auditing, management, or financial advisory, consulting, bookkeeping, or tax services. The certificate to practice as a CPA or license to practice as an LPA shall be designated inactive. An inactive certificate holder or licenseholder may not practice in this state but may use the title "certified public accountant, inactive" or "licensed public accountant, inactive" or the abbreviation, "CPA, inactive" or "LPA, inactive" as applicable. An inactive certificate holder or licenseholder shall pay the annual fees required by this chapter, and adhere to the code of ethics set forth in section 3-01-03-01 but is not required to comply with continuing education requirements set forth in article 3-03.

History: Effective October 1, 1982; amended effective July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2000; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, [43-02.2-04\(16\)](#)

3-02-02-08. Reinstatement fee.

A CPA, LPA, or permitholder whose certificate, license, or permit is suspended, relinquished, not renewed, or revoked, is required to pay a reinstatement fee not to exceed two hundred dollars in addition to the annual fee, as provided in sections 3-02-02-04 and 3-02-02-04.1, and must also satisfy the board that all current requirements to hold a certificate or license or permit in good standing have been met. Application for reinstatement shall be in writing, showing good cause for the reinstatement; such application may be submitted at any time. If the board rules against the applicant, the applicant shall have the right to request a hearing on the application, ~~and such hearing will be held within ninety days from receipt of such request at a time and location set by the board~~ [in accordance with North Dakota Century Code chapter 28-32.](#)

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; July 1, 2008; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-03, 43-02.2-11

CHAPTER 3-03-01 BASIC REQUIREMENTS

Section

3-03-01-01	Credit-Hours or Days Required
3-03-01-02	How Credits Determined
3-03-01-03	Effective Date [Repealed]
3-03-01-04	Exceptions

3-03-01-01. Credit-hours ~~or days~~ required.

Continuing education reports are due from all CPAs and LPAs, except those on retired or inactive status, before ~~August~~July first of each year and any credit-hours submitted must be for the previous July first through June thirtieth.

At the end of each continuing education reporting year, each CPA and LPA, ~~performing accounting, auditing, management or financial advisory, consulting, bookkeeping, or tax services for a client or an employer's client~~ while holding out to the public as a licensee in this state must have completed one hundred twenty credit-hours of acceptable continuing education in the immediate preceding three reporting ~~periods~~years, including six credit-hours of professional ethics content ~~as of June 30, 2022~~, and a minimum of twenty credit-hours each ~~period~~year.

~~—All other accountants who in any way hold out as a CPA or LPA in this state, except those on retired status and those who include the term "inactive" whenever using the CPA or LPA title or abbreviation, must have completed sixty credit-hours of acceptable continuing education (one hundred twenty credit-hours as of June 30, 2022, including six credit-hours of professional ethics content) in the immediately preceding three reporting periods and a minimum of sixteen credit-hours each period, twenty credit-hours each period, starting July 1, 2021.~~

At the end of the first full continuing education reporting year following receipt of an initial original certificate, an accountant must meet the applicable per year minimum, and must meet the applicable three-year minimum, including ethics content, two years thereafter.

History: Amended effective August 1, 1984; October 1, 1984; July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2000; December 1, 2003; April 1, 2018; January 1, 2020; April 1, 2024.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, 43-02.2-04

3-03-01-03. Effective date.

Repealed effective April 1, 2024.

~~—One hundred twenty credit-hours of continuing education for all accountants becomes effective for the period July 1, 2019, through June 30, 2022, and the twenty credit-hours per year minimum becomes effective for the reporting year starting July 1, 2021. The ethics content provision becomes effective for the three-year period ending June 30, 2022.~~

~~**History:** Amended effective August 1, 1984; October 1, 1984; March 1, 1995; October 1, 1999; April 1, 2018.~~

~~**General Authority:** NDCC 43-02.2-03~~

~~**Law Implemented:** NDCC 43-02.2-03, 43-02.2-05~~

3-03-01-04. Exceptions.

The board will consider exceptions to the continuing education requirements for reasons including military service, foreign residency, retirement, and circumstances beyond the accountant's reasonable control. Nonresident accountants are exempt from the requirements of article 3-03 if they verify that

they meet the continuing education requirements of their jurisdictions of residence, provided the board considers those continuing education requirements to be substantially equivalent to those of this state. Nonresident accountants practicing public accountancy in North Dakota must meet the public practice continuing education requirements of their jurisdictions of residence.

History: Amended effective March 1, 1995; September 1, 1997; October 1, 1999; December 1, 2000; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~[43-02.2-04.1](#)

CHAPTER 3-03-02

3-03-02-01. General determination.

The overriding consideration in determining if a specific program qualifies as a continuing education program is if it is a formal program of learning which contributes directly to professional competence. The program must also meet the specifications delineated below.

History: Amended effective July 1, 1987; March 1, 1995; October 1, 1999; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~

3-03-02-02. Formal programs.

1. Formal programs requiring class attendance may qualify only if:
 - a. An outline is prepared in advance and is preserved;
 - b. The program is at least one-fifth continuing education credit-hour in length;
 - c. The program is conducted by a qualified instructor; and
 - d. A record of ~~registration or~~ attendance is maintained.
2. Formal programs not requiring class attendance, subsequently referred to herein as self-study programs, may qualify only if:
 - a. A program syllabus is prepared in advance and is preserved;
 - b. The program is at least one-fifth continuing education credit-hour in length;
 - c. Program materials are prepared by qualified authors;
 - d. The program is offered and administered by an appropriate sponsor; and
 - e. Records of ~~registration and~~ documented completion are maintained.
3. Programs offered by organizations registered in the NASBA national registry of CPE sponsors qualify for continuing education provided they meet the requirements of this article.

History: Amended effective July 1, 1987; March 1, 1995; October 1, 1999; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~

3-03-02-05. Board may seek assistance.

The board may look to other organizations or individuals for assistance in interpreting the acceptability of, and credit to be allowed for, individual continuing education courses.

History: Amended effective July 1, 1987; March 1, 1995; October 1, 1999; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~

CHAPTER 3-03-03

3-03-03-02.1. Temporary practice.

The board may allow the temporary practice of public accounting and use of the CPA or LPA credential, if the CPA or LPA has acquired at least sixty credit-hours of approved continuing education within the preceding three years and agrees in writing to complete, within one year, the remaining continuing education credit-hours necessary to total one hundred twenty credit-hours. If the remaining continuing education credit-hours are not completed within the one year, the CPA or LPA must immediately cease practicing public accounting and using the CPA or LPA credential.

History: Effective July 1, 1991; amended effective March 1, 1995; October 1, 1999; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~[43-02.2-04](#)

3-03-03-04. Documentation.

Formal evidence of course ~~registrations~~[attendance or completion](#), and written records of course sponsorships, titles, dates, times, locations, and instructors must be ~~maintained~~[provided, as required by the board](#) by accountants for all continuing education credit claimed.

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

History: Amended effective July 1, 1987; March 1, 1995; October 1, 1999; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03, [43-02.2-04](#)

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~[43-02.2-04](#)

3-03-03-05. Compliance monitors.

Continuing education reporting forms filed by individuals must be examined annually by the state board of accountancy or an appointed agent thereof, to confirm eligibility of credit-hours claimed. Individuals claiming ineligible credit-hours will be notified, and the credit-hours will be disqualified. Flagrant violations of reporting standards, and situations where bad faith in compliance appears likely, will be reviewed for possible action as noncompliance.

History: Effective July 1, 1987; amended effective March 1, 1995; October 1, 1999; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-02.2-03, [43-02.2-04](#)

Law Implemented: NDCC 43-02.2-03, ~~43-02.2-05~~[43-02.2-04](#)

TITLE 30
GAME AND FISH DEPARTMENT

APRIL 2024

CHAPTER 30-03-01.1

30-03-01.1-02. Bait definitions.

Refer to the current fishing proclamation for legal live aquatic bait definitions. ~~Rainbow smelt are only considered legal live aquatic bait when trapped or seined within the state.~~

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018, April 1, 2024.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01.1-12. Equipment for taking legal live aquatic bait.

~~— A person possessing only a retail license may take legal live aquatic bait with a seine not exceeding twenty-five feet [7.6 meters] in length and six feet [1.8 meters] in depth or with traps not larger than thirty inches [76 centimeters] in length, and twelve inches [30.5 centimeters] in diameter, with a throat opening not to exceed one and three-quarter inches [4.445 centimeters] in diameter. The mesh size of both seine and traps shall not exceed three-eighths inch [9.5 millimeters] square measure.~~

~~— A person possessing the appropriate wholesale license may take legal live aquatic bait with fish traps less than seven feet [2.1 meters] in any dimension. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure and the throat opening shall be less than three inches [76.2 millimeters] in diameter or width. A valid tag issued by the department must be attached to each trap. Seines used by a licensed wholesaler shall be restricted to those less than two hundred fifty feet [76 meters] in length and fourteen feet [4.25 meters] in depth. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure. A tag issued by the department must be affixed to each seine used by the licensee. Only seines and dip nets may be used for the taking of rainbow smelt.~~

A person possessing only a retail license may take legal live aquatic bait with a seine not exceeding twenty-five feet [7.62 meters] in length and six feet [1.83 meters] in depth. Mesh size may not exceed one-half inch [12.7 millimeters] square measure.

A licensed retailer may use traps not larger than thirty inches [76.2 centimeters] in length and twelve inches [30.48 centimeters] in diameter. Mesh size of traps may not exceed one-half inch [12.7 millimeters] square measure and the throat opening of traps may not exceed three inches [7.62 centimeters] in diameter or width. The owner's name, city, and telephone number or the customer equipment registration number issued by the department must be attached to the fish trap.

A person possessing the appropriate wholesale license may take legal live aquatic bait with a seine not exceeding two hundred fifty feet [76.2 meters] in length and fourteen feet [4.27 meters] in depth. Mesh size may not exceed one-half inch [12.7 millimeters] square measure. A tag issued by the department must be affixed to each seine used by the licensee.

A licensed wholesaler may use traps not larger than seven feet [2.13 meters] in any dimension. Mesh size may not exceed one-half inch [12.7 millimeters] square measure and the throat opening of traps may not exceed three inches [7.62 centimeters] in diameter or width. A valid tag issued by the department must be attached to the top of each trap. Only one current valid tag may be attached to the trap.

Hand-held dip nets are legal equipment for retail and wholesale bait vendors. There are no size restrictions for dip nets.

Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred dollar fee.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018; [April 1, 2024](#).

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-04

CHAPTER 30-03-05 FISHING CONTESTS

Section

30-03-05-01	Fishing Contest Defined [Repealed]
30-03-05-02	Organizations Eligible [Repealed]
30-03-05-03	Use of Proceeds [Repealed]
30-03-05-04	Application
30-03-05-05	Fishing Contest Rules and Regulations
30-03-05-06	Reasons for Denying Permits [Repealed]
30-03-05-07	Post-Contest Report Required [Repealed]
30-03-05-08	Penalty

30-03-05-01. Fishing contest defined.

[Repealed effective April 1, 2024.](#)

~~— A fishing contest is any event where prizes or cash are given for catching fish from waters open to public use. These events include high-value tag contests, fishing tournaments, fishing leagues, biggest fish contests, and contests giving prizes for the largest number or weight of fish. Also included are fishing leagues and tournaments that involve multiple fishing events and have a cumulative fee equal to or exceeding fifteen dollars. Individual entry fees, if assessed, represent the number of contest participants. Entry fees must be collected and listed separately from other activities, such as raffles. Fishing contests do not include the following:~~

- ~~1. Any fishing event charging an entry or participation fee less than fifteen dollars, and with fewer than fifty participants, and with fewer than fifteen boats.~~
- ~~2. Individual big fish promotions sponsored by resident, local businesses not charging any entry or participation fee.~~
- ~~3. Organized youth fishing events when participants are under the age of sixteen and no fishing entry fee is charged.~~

~~**History:** Effective March 1, 1984; amended effective May 1, 1994; April 1, 2009; October 1, 2020.~~

~~**General Authority:** NDCC 20.1-02-05(20)~~

~~**Law Implemented:** NDCC 20.1-02-05(20)~~

30-03-05-02. Organizations eligible.

[Repealed effective April 1, 2024.](#)

~~— Only nonprofit veterans, charitable, education, religious, and fraternal organizations, civic and service clubs, and public spirited organizations, as those organizations are defined in North Dakota Century Code chapter 53-06.1 will be issued permits to hold fishing contests. Exemptions to this requirement may be granted by the game and fish director, if, in the opinion of the director, the contest is not detrimental to the fishery resource or to the public, or both.~~

~~**History:** Effective March 1, 1984; amended effective May 1, 1994.~~

~~**General Authority:** NDCC 20.1-02-05(20)~~

~~**Law Implemented:** NDCC 20.1-02-05(20)~~

30-03-05-03. Use of proceeds.

[Repealed effective April 1, 2024.](#)

~~—A minimum of seventy-five percent of any entry or participation fee paid by the contestants for fishing activities must be returned to the contestants as cash or merchandise (must be cash equivalent and cannot include donated merchandise when an entry fee is required). Payback procedures must be stated in the tournament rules and regulations. A minimum of ten percent of the gross proceeds from entry or participation fees is required to be paid as a conservation fee. Contests with no entry fee, but still subject to regulations as defined in subsection 2 of section 30-03-05-01, are required to submit a ten thousand dollar conservation fee unless there is no cash payout associated with the contest, i.e., all prizes are donated merchandise. The conservation fees must be expended on fishery conservation projects or for providing public access to fishing areas and the intended project must be identified on the permit application form. Moneys for fishery conservation or public access projects must be allocated within ninety days after the completion of the tournament. The fishery conservation projects and public access projects must be approved by the game and fish director.~~

~~—The tournament applicant may retain a maximum of fifteen percent of the gross proceeds from entry or participation fees for expenses incurred in putting on the contest.~~

~~**History:** Effective March 1, 1984; amended effective May 1, 1994; January 1, 2000; October 1, 2020.~~

~~**General Authority:** NDCC 20.1-02-05(20)~~

~~**Law Implemented:** NDCC 20.1-02-05(20)~~

30-03-05-04. Application.

~~Any organization desiring to hold a fishing contest must submit an application for a permit to the game and fish director at least thirty days prior to the start of the contest. Information on the [A fishing contest](#) application must include the name of the ~~sponsor~~[organization sponsoring the contest, organization nonprofit or for-profit status designation, name of a person or persons responsible for organizing and conducting the fishing contest](#), location of the waters where the contest is to be held, the dates of the contest, the number of participants [and watercraft \(e.g. boats\)](#) expected for the contest, the amount of the entry fee, ~~identification of the intended fishery conservation or public access project,~~[the recipient of the conservation fee \(if applicable\), and](#) a copy of the tournament regulations; ~~and the name of a person or persons responsible for organizing and conducting the fishing contest.~~~~

~~**History:** Effective March 1, 1984; amended effective May 1, 1994; April 1, 2009; [April 1, 2024](#).~~

~~**General Authority:** NDCC 20.1-02-05(20)~~

~~**Law Implemented:** NDCC 20.1-02-05(20)~~

30-03-05-05. Fishing contest rules and regulations.

- ~~1. In a ~~boat~~[watercraft \(e.g. boats\)](#) tournament, the committee or sponsors shall provide ~~boat~~ launching and loading assistance to tournament participants and must provide all participants with contacts and telephone numbers in case of an emergency.~~
- ~~2. The North Dakota game and fish department may add further tournament regulation restrictions if deemed necessary.~~
- ~~3. Fishing contests for all game and nongame fish, with the exception of paddlefish, ~~pallid and shovelnose~~ sturgeon [\(pallid, shovelnose, and lake\)](#), ~~and~~ zander, ~~and grass carp (white amur)~~ are allowable.~~

~~**History:** Effective March 1, 1984; amended effective May 1, 1994; January 1, 2000; April 1, 2009; October 1, 2010; [April 1, 2024](#).~~

~~**General Authority:** NDCC 20.1-02-05(20)~~

~~**Law Implemented:** NDCC 20.1-02-05(20)~~

30-03-05-06. Reasons for denying permits.

~~[Repealed effective April 1, 2024.](#)~~

~~—Permits may not be issued or may be revoked if the game and fish director believes the fishing contest does not or will not comply with game and fish rules or regulations, or could be harmful to the fishing resource, or that public use facilities such as boat ramps, parking areas, campgrounds, and related facilities are inadequate to support the contest, or the committee or sponsors have failed to submit timely reports.~~

History: Effective March 1, 1984; amended effective May 1, 1994; April 1, 2009.

General Authority: NDCC 20.1-02-05(20)

Law Implemented: NDCC 20.1-02-05(20)

30-03-05-07. Post-contest report required.

Repealed effective April 1, 2024.

~~—Within thirty days after completion of the fishing contest, the permittee shall submit a report to the game and fish director. The report must include the number of contest participants, the quantity (number and total weight) and species of fish taken in the contest, the gross and net proceeds for the tournament, the percentage of the entry fees paid back to the participants as prizes, and suggested conservation projects for departmental approval. Failure to submit this report is justification for denial of future fishing contest permits. Moneys for fishing conservation or public access projects must be allocated within ninety days after the completion of the tournament.~~

History: Effective March 1, 1984; amended effective May 1, 1994.

General Authority: NDCC 20.1-02-05(20)

Law Implemented: NDCC 20.1-02-05(20)

CHAPTER 30-03-06

30-03-06-01. Equipment.

Upon entering or leaving any water body or while in transit, all watercraft, watercraft motors, watercraft trailers, docks, boatlifts, and recreational and commercial equipment used in fishing, hunting, and watercrafting or construction ~~equipment shall~~ **must** be free of prohibited or regulated aquatic nuisance species, as defined in the state's aquatic nuisance species list. Any person in violation is guilty of a class B misdemeanor under North Dakota Century Code section 20.1-17-09.

All equipment is subject to inspection by a North Dakota game and fish department employee. Any inspected equipment that is not free of prohibited or regulated aquatic nuisance species may not enter any waters of the state until approved by the department. Any person in violation is guilty of a class B misdemeanor under North Dakota Century Code section 20.1-17-09.

All commercial barges and ferries or construction-related equipment traveling into the state or for which the vessel's last exit was from a class 1 infested water body must be certified free of aquatic nuisance species by the department before entering into a water of the state. Any person in violation is guilty of a class B misdemeanor under North Dakota Century Code section 20.1-17-09.

All docks, lifts, and related equipment must be dried and left out of the water for at least twenty-one days before they may be placed in another water.

History: Effective April 1, 2008; amended effective October 1, 2020; April 1, 2023; April 1, 2024.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-04

30-03-06-05. Water prohibited.

1. Refer to the North Dakota game and fish department website for a listing of state waters infested with class I prohibited aquatic nuisance species. Fish transported and held in or on ice are allowed.
2. All water must be drained from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, livewells, and baitwells, when out of water or upon entering the state. Water used for instate transportation of legal live bait and legal live baitfish in bait buckets no larger than five gallons in volume is allowed to and from waters of the state not designated as infested with class I prohibited aquatic nuisance species. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions. Potable water and sewage water are excluded from this restriction.
3. Water may not be transported away from waters of the state designated as infested with class I prohibited aquatic nuisance species or imported from another state unless permitted by the department of water resources or otherwise authorized.
4. All drain plugs that may hold back water must be removed, and water draining devices must be open, on all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, during any out-of-water transport of same.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016; April 1, 2016; April 1, 2023; April 1, 2024.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-06

30-03-06-07. Penalty.

Any person violating a provision of this chapter for which a penalty is not specifically provided, except subsection 3 of North Dakota Administrative Code section 30-03-06-05, is guilty of a noncriminal offense and shall pay a one hundred dollar fee. Any person violating subsection 3 of North Dakota Administrative Code section 30-03-06-05 is guilty of a ~~class b misdemeanor under the authority of North Dakota Century Code section 20.1-17-09~~noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016; April 1, 2024.

General Authority: NDCC 20.1-02-05(22)

Law Implemented: NDCC 20.1-02-05(22)

CHAPTER 30-04-02

30-04-02-11. Camping.

Camping for longer than ten consecutive days on any wildlife management area is prohibited. Trailers, campers, motor homes, or tents may not be left on any wildlife management area unless used for daily lodging. Camping is prohibited on those wildlife or fish management areas where posted at public road entry points. Mowing of vegetation for campsites is prohibited on wildlife management areas. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Amended effective April 1, 1986; April 1, 2006; April 1, 2024.

General Authority: NDCC 20.1-11-05

Law Implemented: NDCC 20.1-11-05

CHAPTER 30-05-01

30-05-01-02. Boat safety equipment.

The following equipment is required as indicated, and must be usable and in serviceable condition.

1. **Personal flotation devices - Penalty.**

- a. All motorboats less than sixteen feet [4.8 meters] in length and all nonpowered boats must have one United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons aboard for each person. All motorboats sixteen feet [4.8 meters] or greater in length must have one United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons aboard for each person, and, in addition, one United States coast guard approved throwable type IV device. Any person who violates this subdivision is guilty of a noncriminal offense and shall pay a twenty-five dollar fee for each United States coast guard approved device not aboard as required for each person with a maximum fee of two hundred fifty dollars for a shortage of ten or more.
- b. All persons manipulating any water skis, surfboard, or similar device must wear a United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons. The only exception is that of a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under North Dakota Century Code section 20.1-13-11.

2. **Fire extinguishers.** Motorboats of less than twenty-six feet [7.8 meters] in length need no fire extinguishing equipment, unless the boat has a double bottom not sealed to the hull or not completely filled with flotation material; or unless it has closed stowage compartments in which combustible or flammable materials are stored; or unless it has closed compartments under thwarts and seats wherein portable fuel tanks may be stored; or unless it has closed living spaces; or unless it has permanently installed fuel tanks. If in any of these categories, it must have either a fixed fire extinguishing system in the machinery spaces, or at least one United States coast guard approved 5-B or 10-B type portable extinguisher. Motorboats twenty-six [7.8 meters] to forty feet [12 meters] in length must have either two United States coast guard approved 5-B or 10-B type portable extinguishers or one United States coast guard approved 20-B type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces and one United States coast guard approved 5-B or 10-B type portable extinguisher. Motorboats forty feet [12 meters] or over in length must have either three United States coast guard 5-B or 10-B type portable extinguishers, or one United States coast guard approved 20-B and one 5-B or one 10-B type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces along with two 5-B or two 10-B or one 20-B United States coast guard approved portable extinguishers. Extinguishers may not be more than twelve years old according to the date of manufacture stamped on the bottle.

3. **Backfire flame arrester.** One United States coast guard approved device is required on each carburetor of all gasoline powered engines, except outboard motors.

4. **Bells and whistles.** Boats ~~sixteen feet [4.8 meters]~~ to less than twenty-six feet [7.8 meters] in length require one hand, mouth, or power operated whistle audible at least one-half mile [.8 kilometer]. Boats twenty-six feet [7.8 meters] to less than forty feet [12 meters] in length require a hand or power operated whistle audible at least one mile [1.6 kilometers], and a bell which produces a clear, bell-like tone when struck. Boats over forty feet [12 meters] in length require a power operated whistle audible at least one mile [1.6 kilometers] and a bell which produces a clear, bell-like tone when struck.

5. **Ventilation.** All motorboats with enclosed engine or fuel compartments, and using gasoline as a fuel, must have at least two ventilator ducts, fitted with cowls, or the equivalent, leading to each such compartment, to properly and efficiently ventilate the compartment.
6. **Lighting.** When operating between sunset and sunrise, all motorboats under twenty-six feet [6.8 meters] in length shall exhibit a twenty-point [225 degree] combination red and green bowlight visible for one mile [1.6 kilometers], ten points [112.5 degrees] to the left of the centerline of the boat being red, the ten points [112.5 degrees] to the right of the centerline being green, and a thirty-two-point [360 degree] white stern light, visible for two miles [3.2 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

When operating between sunset and sunrise, all motorboats twenty-six feet [6.8 meters] in length or over shall exhibit a twenty-point [225 degree] white bowlight visible for two miles [3.2 kilometers], a ten-point [112.5 degree] red side light, visible for one mile [1.6 kilometers], on the left side of the vessel, a ten-point [112.5 degree] green side light, visible for one mile [1.6 kilometers] on the right side (the side lights shall be visible through an arc beginning parallel to the centerline of the vessel and extending ten points [112.5 degrees] toward the stern), and a thirty-two-point [360 degree] white stern light visible for two miles [3.6 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

If operating between sunset and sunrise motorboats may not exhibit any other light that impairs the visibility of the bowlight or stern light.

All ~~nonpowered~~nonmotorized boats ~~operating~~anchored or underway between sunset and sunrise shall have readily accessible a white light source, visible for 360 degrees, which shall be temporarily ~~exhibited~~displayed in sufficient time to prevent a collision.

All vessels at anchor between sunset and sunrise must display a white light visible to a boat approaching from any direction.

7. Except as provided in subdivision a of subsection 1, any person who violates this section is guilty of a noncriminal offense and shall pay a twenty-five dollar fee.

History: Amended effective December 1, 1982; April 1, 1986; May 1, 1995; April 1, 2006; October 1, 2020; April 1, 2023; April 1, 2024.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-05

30-05-01-05. Accident reports.

If a collision, accident, or other casualty involving a vessel results in death or injury to a person or damage to property in excess of two thousand dollars, or a person disappears from such vessel under circumstances that indicate death or injury, the operator thereof shall complete and submit a complete boating accident report, ~~CG-3865~~U.S. Coast Guard form, or revision thereof, ~~in duplicate~~ to the game and fish department, within forty-eight hours in cases involving death or injury, within ~~five~~ten days in all other cases. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee. The ~~CG-3865~~U.S. Coast Guard form may be obtained from a game warden, downloaded from the department website, or by contacting the department at the location provided in subsection 3 of section 30-01-01-01.

History: Amended effective December 1, 1982; April 1, 1986; January 1, 1992; April 1, 2006; April 1, 2024.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-08

TITLE 33
STATE DEPARTMENT OF HEALTH

APRIL 2024

**ARTICLE 33-03
STATE DEPARTMENT OF HEALTH**

Chapter	
33-03-01	Free Standing Outpatient Facility - Including Surgical Facilities - Excluding Physicians Clinic [Repealed]
33-03-02	Abortion
33-03-03	Maintenance and Operation of Public Waterworks Systems, Swimming Pools, and Sewerage Systems [Repealed]
33-03-04	Quality of Water [Repealed]
33-03-05	School Water and Sewerage Systems [Repealed]
33-03-06	Sale of Bulk and Bottled Water Supplies Intended for Domestic Purposes [Repealed]
33-03-07	Care and Disposal of Refuse and Garbage [Repealed]
33-03-08	Approval of Plans and Specifications Prior to Construction of Water Works and Sewerage Systems [Repealed]
33-03-09	Health Maintenance Organizations [Repealed]
33-03-10	Home Health Agencies [Repealed]
33-03-10.1	Home Health Agencies
33-03-11	Electronic Hair Removal Technician
33-03-11.1	Electrolysis
33-03-12	Hemophilia
33-03-13	Construction Standards for Residential Facilities for the Physically Disabled
33-03-14	Construction Standards for Small Intermediate Care Facilities for the Mentally Retarded
33-03-15	Hospice Programs
33-03-16	Construction and Location of Toilets [Repealed]
33-03-17	Temporary Work Camps [Repealed]
33-03-18	Milk Sanitation [Repealed]
33-03-19	Food and Drink Sanitation [Repealed]
33-03-20	Minimum Requirements for Sanitation in Places of Employment [Repealed]
33-03-21	Minimum Requirements for Sanitation in Camps [Repealed]
33-03-22	Migrant Labor Housing [Repealed]
33-03-23	Health Care Claims Data
33-03-24	Basic Care Facilities [Repealed]
33-03-24.1	Basic Care Facilities
33-03-24.2	General Standard for Construction and Equipment for Basic Care Facilities
33-03-25	Alternative Health Care Services Projects
33-03-26	Organ Transplant Support Fund
33-03-27	State Community Matching Physician Loan Repayment Program [Repealed]
33-03-28	District Health Units

33-03-29	Residential Care Facilities for Children With Autism
33-03-30	Construction Standards for Residential Care Facilities for Children With Autism
33-03-31	Certificate of Public Advantage [Repealed]
33-03-32	State Community Matching Loan Repayment Program For Nurse Practitioners, Physicians Assistants, and Certified Nurse Midwives [Repealed]
33-03-33	Long-Term Care Nursing Scholarship and Loan Repayment Grant Program
33-03-34	Autism Spectrum Disorder Database
33-03-35	Residential End-of-Life Facility Regulation
33-03-36	Extended Stay Center Registration
<u>33-03-37</u>	<u>Health Care Professional Student Loan Repayment Program</u>

CHAPTER 33-03-37

HEALTH CARE PROFESSIONAL STUDENT LOAN REPAYMENT PROGRAM

Section

<u>33-03-37-01</u>	<u>Definitions</u>
<u>33-03-37-02</u>	<u>Designation as a Defined Area of Need</u>
<u>33-03-37-03</u>	<u>Health Care Professional Eligibility</u>
<u>33-03-37-04</u>	<u>Employer Eligibility</u>
<u>33-03-37-05</u>	<u>Health Care Professional and Employer Prioritization</u>
<u>33-03-37-06</u>	<u>Health Care Professional Application Process</u>
<u>33-03-37-07</u>	<u>Employer Application Process</u>
<u>33-03-37-08</u>	<u>Loan Repayment Contract</u>
<u>33-03-37-09</u>	<u>Department and Employer Payments</u>
<u>33-03-37-10</u>	<u>Amendment - Termination</u>

33-03-37-01. Definitions.

1. "Defined area of need" means a service area or site selected considering the availability of health care services available to individuals who are underserved, experiencing health care professional shortage, or in a rural area.
2. "Department" means the department of health and human services.
3. "Direct health care services" means case consultation, case management, management of an individual's medications, charting, care coordination activities, diagnostic and treatment services followup, telehealth, and patient correspondence.
4. "Employer" means a public or private entity seeking to fill health care needs and includes a clinic, hospital, tribal health organization, an institution or facility that provides services to an individual with developmental disabilities, substance use disorder treatment programs, behavioral health clinic, long-term care facility, assisted living home, correctional facility, a site, or other health care organization that employs health care professionals.
5. "Full-time" means a permanent and program-eligible health care professional position in which the health care professional:
 - a. Is physically present and works in a defined area of need at least thirty hours each week at the location identified in the contract; and
 - b. Works thirty hours in no less than three days each week.
6. "Half-time" means a permanent and program-eligible health care professional position in which the health care professional:

- a. Is physically present and works in a defined area of need at least fifteen hours each week at the location identified in the contract;
- b. Works fifteen hours at the location identified in the contract no less than two days each week; and
- c. Provides telehealth services at least fifteen hours each week in a defined area of need to a second location identified in the contract.

7. "Health care professional" means a qualifying individual practicing as a physician, clinical psychologist, advanced practice registered nurse, registered nurse, physician assistant, or behavioral health professional who provides direct health care services.

8. "Loan repayment" means money specified in a health care professional's authorized service contract to be paid directly to the loan servicer.

9. "Program" means the health care professional student loan repayment program.

10. "Site" means a university, technical college, or teaching hospital that provides education or training to health care professionals; a federally qualified health center; or other facilities.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-01

33-03-37-02. Designation as a defined area of need.

The department shall designate a service area or site as being or as being located in a defined area of need, if at least one of the following criteria is met:

1. There is evidence that at least thirty percent of the population consists of individuals who are underserved;
2. The service area is a rural area;
3. The level of support from the service area;
4. The United States department of health and human services' health resources and services administration has:
 - a. Designated the service area as a health professional shortage area under 42 U.S.C. 254e; or
 - b. Designated the service area as a medically underserved area or one with a medically underserved population; or
5. There is evidence that the site provides education or training to health care professionals seeking to fill health care needs and to increase access to health care services.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-03, 43-12.3-04

33-03-37-03. Health care professional eligibility.

A health care professional shall meet the following requirements to be eligible to participate in this program:

1. The health care professional meets the criteria established by this chapter and North Dakota Century Code sections 43-12.3-05 and 43-12.3-06.
2. The health care professional works full time or half time. If a health care professional works more than twelve hours in any twenty-four-hour period, only twelve hours will count toward the health care professional's full-time or half-time status.
3. The health care professional may not have a simultaneous contract or service obligation with another person for loan repayment. For purposes of this subsection, a simultaneous contract or service obligation does not include:
 - a. An employer's signon bonus, retention bonus, or productivity bonus;
 - b. A service obligation in the:
 - (1) Reserves of the armed forces of the United States;
 - (2) North Dakota national guard; or
 - (3) Commissioned corps of the United States department of health and human services, office of the surgeon general, public health service; or
 - c. Public service loan forgiveness.
4. The health care professional is qualified to work in the United States.
5. The employer contractually commits to provide matching funds equal to the amount required by North Dakota Century Code section 43-12.3-06.
6. The health care professional agrees to provide services to patients covered by Medicare and Medicaid, if applicable.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-05, 43-12.3-06

33-03-37-04. Employer eligibility.

To participate in the program an employer shall:

1. Provide services in a service area or site that is or is located in a defined area of need established under section 33-03-37-02;
2. Submit an employer application in the form and manner approved by the department;
3. Maintain clinical and employment documentation for auditing and provide required documents within thirty days upon the department's request;
4. Maintain a designated representative authorized by the employer to:
 - a. Review and sign contract and program participation documents; and
 - b. Submit progress reports in the form and manner approved by the department for participating health care professionals;
5. Ensure that each eligible health care professional charges for provided services at the usual and customary rates in the employer's area, unless a service recipient is unable to pay a fee set at those rates. An individual unable to pay may be charged at a reduced rate or not charged any fee;

6. Provide services to patients covered by Medicare and Medicaid, and submit a twelve-month billing summary with its application;
7. Verify each eligible health care professional's credentials using a process that includes reference review, licensure verification, and a query of the national practitioner data bank;
8. Employ a health care professional that qualifies under section 33-03-37-03; and
9. Contractually commit to provide matching funds equal to the amount required by North Dakota Century Code section 43-12.3-06.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-03, 43-12.3-04

33-03-37-05. Health care professional and employer prioritization.

Annually the department shall issue a list or criteria of priorities for the application process for eligible health care professional and employers. This list or criteria must include occupation types, locations, practice settings, distribution of program applicants and recipients, and available funding. The department may consider other relevant factors in considering applicants, including:

1. The level of social, behavioral, and medical needs in the defined area of need;
2. The number of current vacancies within the defined area of need;
3. The extent to which the defined area of need is rural;
4. The percentage of individuals who are underserved being served;
5. The health care professional's specialty within an area;
6. The employer and practice setting;
7. Whether the health care professional is a new recruit or a retention candidate;
8. The health care professional's date of availability and anticipated term of availability;
9. The health care professional's education and experience; and
10. The health care professional's willingness to accept Medicare and Medicaid.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-03, 43-12.3-04, 43-12.3-05

33-03-37-06. Health care professional application process.

1. A current full permanent unencumbered unrestricted licensed health care professional wishing to participate in the program shall complete and submit an online application in the form and manner approved by the department. The application must include:
 - a. A current resume or curriculum vitae;
 - b. A current copy of all educational loan statements from each loan servicer;
 - c. The licensure status of the health care professional;
 - d. A history of all medical licenses held by the health care professional;

- e. A description of any litigation to which the health care professional is a party;
- f. A signed copy of the health care professional's employment contract with all addendums;
- g. A signed statement of endorsement and financial commitment to participate in this program from the health care professional's employer; and
- h. Three letters of recommendation, two of which must include:
 - (1) A direct supervisor; and
 - (2) Other organization official.

2. The department shall consider the criteria specified in North Dakota Century Code section 43-12.3-05 and this chapter, as well as all information contained in the application and accompanying documents.

3. The department shall review and score the health care professional's application and approve or deny within ninety days of the application closing based on established criteria set forth by the department.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-02

33-03-37-07. Employer application process.

1. An employer wishing to be eligible for participation in the program shall complete and submit an online application in the form and manner approved by the department. The application must include:

- a. A statement of need;
- b. A statement of the type of services required to meet the needs of the patients served; and
- c. A statement that the eligible health care professional shall accept Medicare and Medicaid, if applicable.

2. The department shall review and score the employer's application and approve or deny the application within ninety days of the application closing based on established criteria set forth by the department.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-02

33-03-37-08. Loan repayment contract.

1. Before receiving loan repayment under this chapter, each health care professional and employer selected shall enter into a loan repayment contract with the department, in the form and manner approved by the department, agreeing to the terms and conditions upon which the loan repayment is granted, the penalties for a breach of the loan repayment contract, and the conditions under which the health care professional may be released from any obligations under the contract without penalty.

2. A designated representative that is authorized by the employer shall sign the loan repayment contract on behalf of the employer.

3. The loan repayment contract must include:

- a. The amounts to be paid to the lending institution by the department and by the employer;
- b. The specific term in which the health care professional is obligated to provide medical services within the community; and
- c. A provision that any financial obligation of the department arising out of a loan repayment contract entered into under this chapter is contingent on funds being appropriated by the legislative assembly and available for loan repayments under North Dakota Century Code chapter 43-12.3 and matching funds paid by the health care professional's employer as required by North Dakota Century Code section 43-12.3-07.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-06

33-03-37-09. Department and employer payments.

- 1. The health care professional shall submit an annual payment verification form to the department, in the form and manner approved by the department, for yearly payment. The form must include:
 - a. The loan lender name;
 - b. Remittance address; and
 - c. Account number.
- 2. Fees associated with international loans requiring a wire transfer are the responsibility of the health care professional or employer.
- 3. The department shall calculate the annual payment that the employer is required to pay under North Dakota Century Code section 43-12.3-06 based on:
 - a. The health care professional's discipline; and
 - b. The qualifying student loan debt level for the health care professional.
- 4. The department shall use a progress report to monitor the health care professional's contractual compliance with the service obligation. The progress report must be:
 - a. Submitted by the employer and approved by the health professional to document that the service provided at the location specified in the contract for the specified population and the duration of the health care professional's service; and
 - b. Submitted on a form and manner approved by the department.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 43-12.3-06

33-03-37-10. Amendment - Termination.

The department shall amend or terminate a loan repayment contract only through a fully executed amendment or termination document.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

ARTICLE 33-11
LICENSING OF EMERGENCY MEDICAL SERVICES

Chapter	
33-11-01	North Dakota Ground Ambulance Services [Repealed]
33-11-01.1	North Dakota Quick Response Units
33-11-01.2	North Dakota Ground Ambulance Services
33-11-02	Basic Life Support Ground Ambulance License
33-11-03	Advanced Life Support Ground Ambulance License
33-11-04	North Dakota Air Ambulance Services
33-11-05	Basic Life Support Air Ambulance License <u>[Repealed]</u>
33-11-06	Advanced Life Support Air Ambulance License <u>[Repealed]</u>
33-11-07	Critical Care Air Ambulance License
33-11-08	Emergency Medical Services Grants

CHAPTER 33-11-01.1

33-11-01.1-01. Definitions.

Words defined in North Dakota Century Code chapter 23-27 shall have the same meaning in this chapter. For purposes of this chapter:

1. ~~"Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.~~
- ~~2.~~ "Department" means the ~~state~~ department of health ~~as defined in chapter 23-01 of the North Dakota Century Code~~ and human services.
- ~~3.2.~~ "Driver" means an individual who operates a quick response unit vehicle.
- ~~4.3.~~ "Driver's license" means the license as required under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.
- ~~5.4.~~ "Emergency medical responder" means ~~a person~~ an individual who is certified as an emergency medical responder by the department.
- ~~6.5.~~ "Emergency medical technician" means ~~a person~~ an individual who is licensed as an emergency medical technician by the department.
- ~~7.6.~~ "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
- ~~8.7.~~ "Patient care provider" means a qualified individual on the quick response unit crew responsible for the care of the patient.
- ~~9.8.~~ "Personnel" means qualified patient care providers, or drivers, or both, within a quick response unit service.
- ~~10.9.~~ "Quick response unit run" means the response of a quick response unit vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care to someone sick or incapacitated, including canceled calls, no transports, and standby events where medical care may be rendered.

~~11.~~ "~~State health council~~" means the council as defined in title 23 of the North Dakota Century Code.

~~42.~~10. "State radio" means the North Dakota department of emergency services division of state radio located at Fraine barracks in Bismarck, North Dakota.

History: Effective January 1, 2008; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-01.2 NORTH DAKOTA GROUND AMBULANCE SERVICES

Section

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33-11-01.2-01. Definitions.

Words defined in chapter 23-27 of the North Dakota Century Code shall have the same meaning in this chapter. For purposes of this chapter:

1. ~~"Advanced first-aid ambulance attendant" means a person who meets the requirements of the advanced first-aid ambulance attendant program and is certified by the department.~~
- ~~2.~~ "Advanced life support ambulance service" means an emergency medical services operation licensed under and meeting all requirements of chapter 33-11-03.
- ~~3.~~ ~~"Ambulance driver" means an individual who operates an ambulance vehicle.~~
- ~~4.~~ 2. "Ambulance run" means the response of an ambulance vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation, or both, to someone ~~sick~~ ill or ~~incapacitated~~ injured, including canceled calls, no transports, and standby events where medical care may be rendered.
- ~~5.~~ ~~"Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.~~

- ~~6.~~ "~~Commission on accreditation of ambulance services~~" means ~~the commission on accreditation of ambulance services located in Glenview, Illinois.~~
- ~~7.3.~~ "Department" means the ~~state~~ department of health ~~as defined in chapter 23-01 of the North Dakota Century Code~~ and human services.
- ~~8.4.~~ "Designated trauma center" means a licensed hospital with a trauma designation as defined in section 33-38-01-06.
- ~~9.5.~~ "Dispatch center" means ~~an ambulance's own~~ a dispatching service that operates on a continual basis with dedicated personnel and receives ambulance run requests from a public safety answering point and radio dispatches ambulances.
- ~~10.6.~~ "Driver's license" means the license as required under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.
7. "Emergency medical service vehicle operator" means an individual who operates an ambulance or other emergency medical service vehicle and has had emergency vehicle operation training.
- ~~11.8.~~ "Emergency medical technician" means ~~a person who is licensed as an emergency medical technician~~ an individual certified by the national registry of emergency medical technicians as an emergency medical technician. An emergency medical technician is eligible for licensure as an emergency medical technician upon completion of a license application and approval by the department.
- ~~12.9.~~ "Equivalent" means ~~training of equal or greater value which accomplishes the same results as determined by the department~~ qualifications reasonably comparable to those specifically listed as required for training, certification, licensure, credentialing, or recognition.
- ~~13.10.~~ "Headquarters ambulance service" means the base of operations for an ambulance service that operates subordinate substation ambulances.
- ~~14.11.~~ "Industrial site ambulance service" means an ambulance service that ~~primarily serves a~~ private organization and ~~may or may not offer service to~~ the general public.
- ~~15.12.~~ "Licensed health care facilities" means facilities licensed under chapter 23-16 of the North Dakota Century Code.
- ~~16.~~ "~~Major trauma patient~~" means ~~any patient that fits the trauma triage algorithm as defined in chapter 33-38-01.~~
- ~~17.13.~~ "Nonemergency health transportation" means health care transportation not provided by a licensed ambulance service that takes place on a scheduled basis by licensed health care facilities to their own patients or residents whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or emergency medical treatment upon arrival at the final destination.
- ~~18.14.~~ "Paramedic" means ~~a person who is an individual~~ certified ~~as an emergency medical technician-paramedic~~ by the national registry of emergency medical technicians ~~and licensed by the~~ as a paramedic. A paramedic is eligible for licensure as a paramedic upon completion of a license application and approval by the department.
- ~~19.15.~~ "Paramedic with additional training" means evidence of successful completion of additional training and appropriate periodic skills verification in such topics as management of patients on ventilators, twelve-lead electrocardiograms or other critical care monitoring devices, drug

infusion pumps, and cardiac or other critical care medications, or any other specialized procedures or devices determined at the discretion of the paramedic's medical director.

~~20.16.~~ "Personnel" means ~~qualified primary care providers, or drivers, or both, within an ambulance service~~an individual maintained on an emergency medical service agency roster.

~~21.~~ "Primary care provider" means ~~a qualified individual on the ambulance crew responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.~~

~~22.17.~~ "Public safety answering point" means a government-operated call center that receives 911 calls from the public and dispatches public safety resources.

~~23.~~ "Scheduled basic life support transfer" means ~~transfers provided on a scheduled basis by an advanced life support service to patients who need no advanced life support procedures en route.~~

18. "Revocation" means the official cancellation of a license.

19. "Sanction" means to impose a penalty for disobeying a law or rule.

20. "Service area" means the geographic area that a basic or advanced life support ground ambulance service is obligated to provide emergency medical transportation services. This includes emergency and nonemergency responses and medically appropriate patient transfers between hospitals or other medical facilities.

~~24.21.~~ "Specialty care transport" means interfacility transportation, including transfers from a hospital to an aeromedical intercept site, of a critically injured or ill patient by a ground ambulance vehicle, including medically necessary supplies and services, at a level of service beyond the scope of the ~~emergency medical technician-paramedic~~paramedic.

~~25.~~ "State health council" means ~~the council as defined in title 23 of the North Dakota Century Code.~~

~~26.22.~~ "State radio" means the North Dakota department of emergency services division of state radio ~~located at Fraire barracks in Bismarck, North Dakota.~~

~~27.23.~~ "Substation ambulance service" means a subordinate operation of a headquarters ambulance service ~~located in a separate municipality.~~

~~28.~~ "System status management" means ~~strategically positioning ambulances in geographic locations during various times of the day based on historical data that can aid in predicting operational demands.~~

24. "Suspension" means the temporary withdrawal of a license during the period of the suspension.

25. "Trauma patient" means any patient meeting the red or yellow criteria of the American college of surgeons national guideline for the field triage of injured patients.

History: Effective January 1, 2008; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-02. License required - Fees.

- ~~1. No ground ambulance services, as defined in chapter 23-27 of the North Dakota Century Code, shall be advertised or offered to the public or any person unless the operator of such~~

~~service is licensed by the department~~A person, as an owner, agent or otherwise, may not operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in operating a basic life support ambulance service or advanced life support ambulance service in this state unless that person holds a license as a basic life support ambulance service or advanced life support ambulance service or is exempt from these requirements.

2. The license shall expire midnight on October thirty-first of the even year following issuance. ~~License renewal shall be on a biennial basis~~The department shall relicense for a two-year period, expiring on October thirty-first, a basic life support or advanced life support ambulance service successfully meeting the requirements of the North Dakota ambulance service licensure program.
3. A license is valid only for the ~~service~~entity for which it is issued. A license may not be sold, assigned, or transferred.
4. The license decal shall be displayed in a conspicuous place inside the patient compartment of the ambulance vehicle. ~~An operator operating more than one ambulance unit out of a town, city, or municipality will be issued duplicate licenses for each unit at no additional charge.~~
5. The nonrefundable biennial license fee, ~~including special licenses,~~ shall be fifty dollars for each headquartersground ambulance service ~~location and fifty dollars for each substation location, including headquarters, substations, and industrial ambulance services.~~
6. Entities solely providing nonemergency health transportation services are not required to obtain a license under chapter 23-27 of the North Dakota Century Code as long as they do not advertise or offer emergency medical services to the general public or render acute medical care.

History: Effective January 1, 2008; amended effective January 1, 2024.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-03. Application for license.

- ~~1. Application for the license shall be made in the manner prescribed by the department.~~
- ~~2. The application must be for a headquarters ambulance service or substation ambulance service at either the basic life support level as defined in chapter 33-11-02.2, or for the advanced life support level as defined in chapter 33-11-02.3.~~
- ~~3. New operators applying for an ambulance service license for an operation that will be based in a city already served by a licensed advanced life support ambulance service must apply for advanced life support ambulance licensure. In addition, new operators must also provide service to the same geographic response area and be able to meet the response time performance standards commensurate with the existing licenseholder.~~

An application for a basic life support ambulance service or advanced life support ambulance service license shall be submitted on a form or through an electronic process, as prescribed by the department. The application must contain the following information as well as additional information and documents that may be solicited by the application form:

1. The name and mailing address of the applicant and a primary contact individual and telephone number and electronic mail address at which that individual can be reached.
2. The name under which the applicant shall hold itself out to the public in conducting its emergency medical service operations and the address of its primary location in this state out of which it shall conduct its emergency medical service operations. If the applicant seeks to

conduct emergency medical service agency operations out of more than one location, the address of its primary operational headquarters and each other location out of which it intends to operate must be provided. If the applicant holds itself out to the public under different fictitious names for the emergency medical service operations it conducts at different locations, the fictitious name under which it intends to operate at each location must be provided.

3. The manner in which the applicant is organized.

4. The tax status of the applicant.

5. The geographic area for which the applicant intends to provide service. If the service is a type of service that is dispatched by a public safety answering point, the applicant shall detail the geographic area, if any, in which it plans to routinely respond to emergency dispatches.

6. A personnel roster.

7. The number and types of emergency medical service vehicles to be operated by the applicant and identifying information for each emergency medical service vehicle.

8. The communication access and capabilities of the applicant.

9. A full description of the emergency medical service agency services that the applicant intends to provide out of each location and how it intends to respond to emergency calls if it will not conduct operations out of a fixed location or locations.

10. The names, titles and summary of responsibilities of individuals who will be staffing the emergency medical service operation as officers, directors, or other emergency medical service agency officials.

11. A statement attesting to the veracity of the application, which shall be signed by the principal official of the applicant.

History: Effective January 1, 2008; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-04. Issuance and renewal of licenses.

1. The department or its authorized agent may inspect the service. If minimum standards for either basic life support ground ambulance services or advanced life support ground ambulance services are met, the department ~~shall~~may issue a license and designate its service area. The department may designate a new ambulance service to operate in a service area if the following conditions are present:

a. The existing ambulance service has not complied with the performance standards outlined in section 33-11-01.2-14 or 33-11-01.2-17 or chapter 33-11.2-15; or

b. The county commission or city commission having governing authority within an ambulance service area has petitioned the department requesting another ambulance service to operate in their area due to poor performance. Ambulance service performance issues must be documented, quantifiable, and persistent.

2. A service may request that the department consider it in compliance with this chapter if it is fully accredited by ~~the commission on accreditation of ambulance services or its equivalent~~an ambulance accreditation agency recognized by the department.

3. Services requesting their compliance with this chapter to be verified through an accrediting agency shall submit to the department a copy of the entire accrediting agency survey report. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.

History: Effective January 1, 2008; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-05. ~~Special licenses and waivers~~Waivers.

- ~~1. An operator of a ground ambulance service intended for industrial site use may be issued a special license by the department.~~

~~2.~~ Based on each individual case, the department may waive any provisions of this chapter.

- ~~3.~~2. The waiver provision ~~shall~~must only be used for a specific period in specific instances, provided such a waiver does not adversely affect the health and safety of the ~~person~~individual transported, and then only if a nonwaiver would result in unreasonable hardship upon the ambulance service.

History: Effective January 1, 2008; amended effective January 1, 2024.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-06. Other requirements for substation ambulance operation.

Repealed effective January 1, 2024.

- ~~1. A substation ambulance operation and all of its assets must be fully owned and operated by a headquarters ambulance service. A substation ambulance may not establish a separate business structure independent of the headquarters service.~~
- ~~2. A substation ambulance service may not have its own governing board separate from a governing board of the headquarters ambulance service.~~
- ~~3. All logos, vehicle lettering, personnel uniforms, and signage on any substation building must reflect the name of the headquarters ambulance service. However, a logo, vehicle lettering, personnel uniforms, or signage on a substation building may include the name of the substation.~~
- ~~4. A licensed advanced life support ambulance service meeting the requirements of chapter 33-11-03 may operate a substation ambulance that meets the basic life support ambulance standards outlined in chapter 33-11-02.~~
- ~~5. A substation ambulance service may not be established in a city that has a licensed ambulance service based in that city.~~

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-06.1. Headquarter and substation ambulance requirements.

In addition to requirements as listed in the remainder of chapter 33-11-01.2, the following items apply to headquarter ambulance services and substations:

1. Application for licensure by a headquarter ambulance service shall be made as described in section 33-11-01.2-03 and shall include all information regarding all substations under the control of the headquarters ambulance service.
2. A substation ambulance operation and all of its operational assets must be fully owned or leased and operated by a headquarters ambulance service. A substation ambulance may not establish a separate business structure independent of the headquarters service.
3. A substation ambulance service may not have its own governing board separate from a governing board of the headquarters ambulance service.
4. All logos, vehicle lettering, personnel uniforms, and signage on any substation building must reflect the name of the headquarters ambulance service. However, a logo, vehicle lettering, personnel uniforms, or signage on a substation building may include the name of the substation.
5. A licensed advanced life support ambulance service meeting the requirements of chapter 33-11-03 may operate a substation ambulance that meets the basic life support ambulance standards outlined in chapter 33-11-02.
6. A substation ambulance service may not be established in a city that has a licensed ambulance service based in that city.
7. A substation ambulance service may be available intermittently. The headquarters ambulance service is responsible for responding when the substation ambulance is unavailable. In lieu of responding, the headquarters ambulance service may request that the quickest available ambulance to respond be dispatched when the substation is unavailable. The headquarters ambulance service must inform its dispatching entity as to the time of availability of its substation ambulance service.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-07. ~~Availability of ground~~Ground ambulance service requirements.

1. A headquarters ambulance service shall be available twenty-four hours per day and seven days per week, except as exempted through waiver by the department.
2. A substation ambulance service may be available intermittently. When the substation ambulance is not available it is the responsibility of the headquarters service to respond to calls within that area if no closer ambulance can respond. The headquarters ambulance service must inform its dispatching entity as to the time of availability of its substation ambulance service.
3. All drivers of ambulance or emergency medical service vehicles shall have a current valid driver's license pursuant to requirements under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.
4. All licensed ambulance services shall keep the ambulance vehicle and other equipment clean and in proper working order.
5. All supplies and other equipment coming in direct contact with the patient must be either a single-use disposable type or cleaned, laundered, or disinfected after each use.

6. When a vehicle has been utilized to transport a patient known to have a communicable disease, the vehicle and all exposed equipment must be disinfected before the transport of another patient.
7. Each ambulance run must be reported to the department electronically via the North Dakota emergency medical services data repository.
8. All ambulance services shall give the receiving health care facility a detailed patient report at the time of patient transfer.
9. All ambulance services shall submit a trauma, stroke, cardiac, and other time-critical condition transport plan to the department upon request.
10. All licensed ambulance services shall keep either an electronic or paper copy of each patient care report on file for a minimum of seven years.
11. All licensed ambulance services shall have current written protocols developed and signed by their medical director. The current version of the protocols must be kept on file with ambulance service management. The ambulance service manager shall keep inactive protocols for a period of seven years after deactivating the protocol.
12. All ambulance services shall report any collision involving an ambulance that results in property damage of four thousand dollars or greater, or personal injury. The report must be made within thirty days of the event and on a form or in a manner provided by the department.

History: Effective January 1, 2008; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-08. Driver's license required.

Repealed effective January 1, 2024.

~~—All drivers of ambulance service vehicles shall have a current valid driver's license pursuant to requirements under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.~~

~~**History:** Effective January 1, 2008.~~

~~**General Authority:** NDCC 23-27-04~~

~~**Law Implemented:** NDCC 23-27-04~~

33-11-01.2-09. Number of personnel required.

Repealed effective January 1, 2024.

~~—The minimum personnel required on each ambulance run shall be one driver and one primary care provider. Basic life support ambulance services must maintain a file that identifies at least two qualified ambulance service personnel on a written call schedule. Advanced life support ambulances must maintain a file that identifies at least two qualified ambulance service personnel on a written call schedule for each staffed ambulance as required in section 33-11-03-05.~~

~~**History:** Effective January 1, 2008; amended effective July 1, 2010.~~

~~**General Authority:** NDCC 23-27-04~~

~~**Law Implemented:** NDCC 23-27-04~~

33-11-01.2-10. Other requirements.

Repealed effective January 1, 2024.

- ~~1. Personnel must be able to identify and locate all equipment items required to be carried in an ambulance.~~
- ~~2. All licensed ambulance services shall keep the ambulance vehicle and other equipment clean and in proper working order.~~
- ~~3. All linens, airways, oxygen masks, nasal cannulas, and other equipment coming in direct contact with the patient must be either a single-use disposable type or cleaned, laundered, or disinfected after each use.~~
- ~~4. When a vehicle has been utilized to transport a patient known to have a communicable disease other than a common cold, the vehicle and all exposed equipment shall be disinfected before the transport of another patient.~~
- ~~5. Each ambulance run must be reported to the department in the manner and in the form determined by the department.~~
- ~~6. All ambulance services must give the receiving licensed health care facility a copy of the run report.~~
- ~~7. All equipment must be stowed in cabinets or securely fastened when not in use.~~
- ~~8. All ambulance services must submit a trauma transport plan to the department upon request.~~
- ~~9. All licensed ambulance services must keep either an electronic or paper copy of each run report on file for a minimum of seven years.~~
- ~~10. All licensed ambulance services must have current written protocols developed and signed by their medical director. The current version of the protocols must be kept on file with ambulance service management. The ambulance service manager must keep inactive protocols for a period of seven years after deactivating the protocol.~~
- ~~11. All ambulance services must report any collision involving an ambulance that results in property damage of one thousand dollars or greater, or personal injury. The report must be made within thirty days of the event and on a form provided by the department.~~

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-11. Out-of-state operators.

1. Operators licensed in another state may pick up patients within this state for transportation to locations within this state under the following circumstances:
 - a. When there is a natural disaster, such as a tornado, earthquake, or other disaster, which may require all available ambulances to transport the injured; or
 - b. When an out-of-state ambulance is traveling through the state for whatever purpose comes upon an accident or medical emergency where immediate emergency ambulance services are necessary.
- ~~2. Out-of-state ambulance services who expect to pick up patients from within this state and transport to locations within this state must meet the North Dakota state standards and become licensed under chapter 23-27 of the North Dakota Century Code and this chapter.~~
- ~~3. Out-of-state fire units responding to ~~North Dakota~~this state for the purposes of forest fire or grassland fire suppression may bring their own emergency medical personnel to provide~~

emergency medical treatment to their own staff. The emergency medical personnel must be certified by the national registry of emergency medical technicians and have physician oversight.

History: Effective January 1, 2008; amended effective January 1, 2024.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-13. Ground ambulance service vehicle requirements.

1. All ground ambulances must have a vehicle manufactured to be an ambulance.
2. A ground ambulance must have a patient care compartment that is designed to carry at least one patient on a stretcher that is securely mounted to the ambulance and that enables transportation in both the supine and seated upright positions.
3. A ground ambulance must have a patient care compartment that is designed to provide sufficient access to a patient's body to perform and maintain advanced life support skills, including adequate space for one caregiver to sit superior to the patient's head to perform required advanced life support airway skills, and other emergency medical services skills required by the emergency medical service agency's emergency medical services protocols.
4. A ground ambulance must have a design that does not compromise patient safety during loading, unloading, or patient transport. A ground ambulance must be equipped with a door that will allow loading and unloading of the patient without excessive maneuvering.
5. A ground ambulance must be equipped with permanently installed climate control equipment to provide an environment appropriate for the medical needs of a patient.
6. A ground ambulance must have interior lighting adequate to enable medical care to be provided and patient status monitored without interfering with the vehicle operator's vision.
7. A ground ambulance must be designed for patient safety so that the patient is isolated from the operator's compartment in a manner that minimizes distractions to the vehicle operator during patient transport and prevents interference with the operator's manipulation of vehicle controls.
8. A ground ambulance must be equipped with appropriate patient restraints and with restraints in every seating position within the patient compartment.
9. A ground ambulance must be equipped with two-way radios capable of communication with medical command facilities, receiving facility communications centers, public safety answering points, and ambulances for the purpose of communicating medical information and assuring the continuity of resources for patient care needs.
10. A ground ambulance must carry an oxygen supply that is cable of providing high flow oxygen at twenty-five or more liters per minute to a patient for the anticipated duration of patient transport.
11. All ground ambulance service vehicles must be equipped with a siren and flashing lights as described for class A emergency vehicles in subsection 2 of section 39-10-03 of the North Dakota Century Code.

History: Effective January 1, 2008; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-14. Transporting of patients.

Ambulance services ~~must~~shall transport patients to the nearest appropriate licensed health care facility according to their hospital transport plan except for:

1. Interfacility transports ~~shall~~must be made in accordance with the referring ~~or accepting~~ physician's orders.
2. In the following specific instances transport must be made to a licensed health care facility with specific capabilities or designations. This may result in bypassing a closer licensed health care facility for another located farther away. An ambulance service may deviate from these rules contained in this section on a case-by-case basis if online medical control is consulted and concurs.
 - a. ~~Major trauma~~Trauma patients must be transported to a designated trauma center as per article 33-38.
 - b. A patient suffering acute chest pain that is believed to be cardiac in nature or an acute myocardial infarction determined by a twelve-lead electrocardiograph must be transported to a licensed health care facility capable of performing primary percutaneous ~~catheter insertion~~coronary intervention or fibrinolytic therapy pursuant to the North Dakota cardiac system ST-elevation myocardial infarction, non-ST elevation myocardial infarction, and acute coronary syndrome guide.
 - c. A patient suffering a suspected stroke must be transported to a designated acute stroke ready hospital, primary stroke center, or a comprehensive stroke center pursuant to the North Dakota acute stroke treatment guidelines.
 - ~~e.d.~~ In cities with multiple hospitals an ambulance service may bypass one hospital to go to another hospital with equal or greater services if the additional transport time does not exceed ten minutes.
3. An officer, employee, or agent of any emergency medical services operation may refuse to transport an individual to a licensed health care facility for which transport is not medically necessary and may recommend an alternative course of action to that individual, including transportation to an alternative destination such as an urgent care center, clinic, physician's office, or other appropriate destination identified by the emergency medical services operation's medical director, if the emergency medical service operation has developed protocols to refuse transport of an individual and recommend an alternative course of action.

History: Effective January 1, 2008; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-15. Required advanced life support care.

When it would not delay transport time, basic life support ambulance services ~~must~~shall call for a rendezvous with an advanced life support ~~ground ambulance, or an advanced life support or critical care air ambulance~~capable agency, paramedic, or its equivalent if the basic life support ambulance is unable to provide the advanced life support interventions needed to fully treat a patient exhibiting:

1. Traumatic injuries that meet the trauma code activation criteria as defined in section 33-38-01-03.
2. Cardiac chest pain or acute myocardial infarction.
3. Cardiac arrest.

4. Severe respiratory distress or respiratory arrest.

5. Suspected stroke or stroke-like symptoms.

History: Effective January 1, 2008; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-16. Communications.

To ensure responder safety and a seamless integration with the broader public safety response system, ground ambulance services **mustshall** have the following elements to their communications system:

1. They **mustshall** have a radio call sign issued by state radio.
2. They **mustshall** be dispatched directly from a public safety answering point ~~by radio or pager.~~
3. They **mustshall** have a radio capable of transmitting and receiving voice communications with the local public safety answering point, law enforcement responders, fire responders, and other public safety agencies ~~on radio frequencies determined by state radio.~~
4. During the response and transport phases of an emergency ambulance run, an ambulance **mustshall** notify its dispatch center or public safety answering point when it:
 - a. Is en route to the scene.
 - b. Has arrived at the scene.
 - c. Has left the scene.
 - d. Has arrived at the transport destination.
 - e. Is available for the next ambulance run.
5. An ambulance may respond to the scene of an emergency with a fragmented crew if:
 - a. Any crewmember that is responding to the scene separately from the ambulance has a hand-held radio capable of transmitting and receiving radio traffic on frequencies designated for ambulances ~~by state radio.~~
 - b. The crewmembers communicate with each other by radio to ensure that a full crew will ultimately arrive at the scene of an emergency and be able to treat and transport patients.
6. During the transport phase of an emergency ambulance run, the ambulance **mustshall** give a radio or telephone report on the patient's condition to the receiving hospital as soon as it is practical. Early notification to the receiving hospital ~~will allow~~ allows the hospital more time to prepare for the patient's arrival.

History: Effective July 1, 2010; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-17. Response times.

~~4.~~ Ground ambulances **mustshall** meet the following ~~response~~ time standards ninety percent of the time when dispatched to an emergency request as determined by public safety answering point

protocols or to an emergency interfacility transport as determined by the transferring health care provider.

- ~~a. The time of dispatch to the time that the ambulance is en route must not exceed ten minutes to those incidents in which the public safety answering point or transferring health care provider, as appropriate, has determined that a potential life-threat exists.~~
 - ~~b. Within the city limits of Bismarck, Fargo, Grand Forks, Mandan, Minot, and West Fargo the time from dispatch to the arrival on scene must not exceed nine minutes.~~
 - ~~c. In rural areas as defined by the United States census and frontier area ambulance services that respond to interstate 94, interstate 29, United States highway 2, or United States highway 83 between Bismarck and Minot, the time from dispatch to the arrival on scene must not exceed twenty minutes.~~
 - ~~d. In frontier areas as defined by the United States census, the time from dispatch to the arrival on scene must not exceed thirty minutes.~~
- ~~2. Failure to meet response time standards when calculated in the two-year licensure period will require the ambulance service to develop a comprehensive plan of correction approved by the department which would include:~~
- ~~a. An analysis of the barriers to achieving the response time standard.~~
 - ~~b. A plan to remove or minimize all barriers that have been identified.~~
 - ~~c. Placing a notice in the official county newspaper notifying the public of the ambulance service's response time deficiency in the format determined by the department.~~

History: Effective July 1, 2010; amended effective October 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-18. Strike team designation.

Repealed effective January 1, 2024.

~~— No ambulance service licensed under this chapter may hold itself out as an ambulance strike team unless it is so designated by the department.~~

History: Effective July 1, 2010.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-19. Mutual aid agreements.

Repealed effective January 1, 2024.

~~— Each licensed ambulance service must have at least one mutual aid agreement with a neighboring licensed ambulance service that can assist when its operational capacity is exceeded. A copy of each mutual aid agreement shall be maintained in the files of each licensee.~~

History: Effective July 1, 2010.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-19.1. Service areas.

To ensure reasonably adequate ambulance service coverage and to prevent competition that would impair the long-term availability of services to the public, the department shall designate service areas when requested or at the department's discretion.

1. Upon request by a licensed ambulance service the department shall designate its service area. The requesting agency shall have a base of operations within that service area, currently be providing ambulance response within that service area, and be in good standing with the department.
2. The geographic area of the service area must be defined by the department based on the reasonableness of a licensed ambulance service to respond to all requests for service within the area.
3. Service area designation may not impede the ability of the designee or health care facility requesting interfacility transportation to utilize other licensed ground ambulance services for mutual aid when the designee is unable to provide services due to capacity, level of service required exceeds what the local ambulance service can provide, or for specialty care transport that the designee cannot provide.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-20. ~~Disaster~~Emergency operations plan.

~~Each licensed ambulance service must complete the disaster plan template as published by the department with appropriate local information. A copy of the completed disaster plan must be placed in each ambulance and one copy must be sent to the department. The disaster plan may include specialized equipment or supplies as required in the state emergency medical services disaster plan as published by the department.~~ shall be aware of its role as defined by local, county, and state emergency operations plans and shall be able to access the emergency operations plan as needed.

History: Effective July 1, 2010; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-21. ~~Sanctions~~Denials, suspension, or revocation of licensure.

Failure to meet standards outlined in article 33-11 may result in sanctions based on the severity of the noncompliance ~~with standards~~. Based on each individual case, the department may impose the following sanctions on licensed ambulance services:

1. Require the ambulance service to submit a detailed plan of correction that ~~identifies~~ acknowledges the deficiencies as designated by the department and outlines the steps needed to become fully compliant with standards.
2. Require the ambulance service to ~~place a public notice in the official county newspaper in each county in which the ambulance service operates outlining the operational deficiencies of the ambulance service. The notice must be approved by the department prior to its publication~~ follow sanction requirements as outlined in department policy.
3. ~~Require the~~ Revocation or suspension of ambulance service to ~~host a public meeting with stakeholders of the local emergency medical services system to discuss the operational deficiencies and develop a plan of correction and submit that plan to the department.~~

~~Stakeholders must be notified at least thirty days prior to the meeting. The following groups must be invited to attend:~~

- ~~a. The general public. An invitation to the meeting must be made in the official county newspaper in each county to which the ambulance service provides service.~~
- ~~b. City and county government officials. An invitation letter must be mailed to each city and county government leaders within the ambulance service's normal service area.~~
- ~~c. All neighboring emergency medical service agencies. An invitation letter must be mailed to each quick response unit within the ambulance service's area and to each bordering ambulance service.~~
- ~~d. Hospital officials. An invitation letter must be sent to the hospitals to which the ambulance service routinely transports patients.~~
- ~~e. Medical director. An invitation letter must be sent to the ambulance service's medical director.~~
- ~~f. Regional trauma committee. An invitation letter must be sent to the regional trauma committee as defined in article 33-38.~~
- ~~g. The department. An invitation letter must be sent to the North Dakota department of health division of emergency medical services and trauma [licensure](#).~~

History: Effective July 1, 2010; [amended effective January 1, 2024](#).

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-22. Industrial site ambulance services.

An operator of a ground ambulance service intended for industrial site use may be issued a special license by the department.

1. The ambulance service may not advertise or offer service to the general public.
2. The ambulance service may provide advanced life support interventions on an as-needed basis if all requirements of chapter 33-11-03 are satisfied.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-23. Government agency ambulance services.

An operator of a ground ambulance service intended for federal or state government emergency operations may be issued a special license by the department.

1. The ambulance service may offer service to the general public and special populations during emergency operations.
2. The ambulance service may provide basic and advanced life support interventions as needed provided the service has met all minimum staffing and equipment requirements of chapters 33-11-02 and 33-11-03, respectively.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-24. General operating standards.

1. Documentation requirements for licensure. An applicant for an emergency medical service agency license shall have the following documents available, paper or online, for inspection by the department:
 - a. A roster of active personnel, including the emergency medical service agency medical director, with licensure numbers and dates of licensure expiration for each emergency medical service provider.
 - b. A record of the age of each emergency medical service provider and emergency medical service vehicle operator and a copy of the driver's license for each emergency medical service vehicle operator.
 - c. Documentation, if applicable, of the initial and most recent review of each emergency medical service provider's competence by the emergency medical service agency medical director and the emergency medical service provider licensure level at which each emergency medical service provider is permitted to practice.
 - d. The process for scheduling staff to ensure that the minimum staffing requirements as required by this chapter are met.
 - e. Identification of individuals who are responsible for making operating and policy decisions for the emergency medical service agency, such as officers, directors, and other emergency medical service agency officials.
 - f. Criminal, disciplinary, and exclusion information for all individuals who staff the emergency medical service agency as required under subsection 5.
 - g. Copies of the ambulance service's emergency medical services protocols.
 - h. Copies of the written policies required under this section.
 - i. Emergency medical service patient care records.
 - j. Call volume records from the previous year's operations. These records must include a record of each call received requesting the emergency medical service agency to respond to an emergency, as well as a notation of whether it responded to the call and the reason if it did not respond.
 - k. A record of the time periods for which the emergency medical service agency notified the public safety answering point, under subdivision a of subsection 6, that it would not be available to respond to a call.
2. Emergency medical service vehicles, equipment and supplies. The department shall publish in administrative rules the vehicle construction and equipment and supply requirements for emergency medical service agencies based upon the types of services they provide and the emergency medical service vehicles they operate. Required equipment and supplies must be carried and readily available in working order.
3. Use of individuals under eighteen years of age. The emergency medical service agency shall comply with chapter 34-07 of the North Dakota Century Code, relating to child labor; chapter 46-02-07; the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.S. 201 et seq.], and rules or regulations adopted pursuant to chapter 34-07 of the North Dakota Century Code or Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.S. 201 et seq.] when it is using individuals under eighteen years of age to staff its operations. The emergency medical service agency shall also ensure that an emergency medical service

provider under eighteen years of age, when providing emergency medical services on behalf of the emergency medical service agency, is directly supervised by an emergency medical service provider who is at least eighteen years of age who has the same or higher-level of emergency medical service provider licensure and at least one year of active practice as an emergency medical service provider.

4. Emergency medical service agency medical director. An emergency medical service agency shall have an emergency medical service agency medical director.

5. Responsible staff. An emergency medical service agency shall ensure that individuals who staff the emergency medical service agency, including its officers, directors and other members of its management team, emergency medical service providers, and emergency medical service vehicle operators, are responsible individuals. In making that determination, an emergency medical service agency shall require each individual who staffs the emergency medical service agency to provide it with the information and documentation related to criminal convictions, disciplinary sanctions, and exclusions and require each emergency medical service vehicle operator to provide it with the information and documentation related to his or her driving record and to update that information if and when additional convictions, disciplinary sanctions, and exclusions occur. The emergency medical service agency shall consider this information in determining whether the individual is a responsible individual. An emergency medical service agency shall also provide the department with notice of any change in its management personnel to include as a new member of its management team an individual who has reported to it information required under this subsection.

6. Communicating with public safety answering points.

a. Responsibility to communicate unavailability. An emergency medical service agency shall apprise the public safety answering point in its area, in advance, as to when it will not be in operation due to inadequate staffing or for another reason and when its resources are committed in a manner that it will not be able to respond with an emergency medical service vehicle, if applicable, and required staff, to a request to provide emergency medical services.

b. Responsibility to communicate delayed response. An emergency medical service agency shall apprise the public safety answering point as soon as practical after receiving a dispatch call from the public safety answering point, if it is not able to have an appropriate emergency medical service vehicle, if applicable, or otherwise provide the requested level of service, including having the required staff en route to an emergency within the time as may be prescribed by a public safety answering point for that type of dispatch.

c. Responsibility to communicate with public safety answering point generally. An emergency medical service agency shall provide a public safety answering point with information, and otherwise communicate with a public safety answering point, as the public safety answering point requests to enhance the ability of the public safety answering point to make dispatch decisions.

d. Response to dispatch by public safety answering point. An emergency medical service agency shall respond to a call for emergency assistance as communicated by the public safety answering point, provided it is able to respond as requested. An emergency medical service agency is able to respond as requested if it has the staff and an operational emergency medical service vehicle, if needed, capable of responding to the dispatch. An emergency medical service agency may not refuse to respond to a dispatch based upon a desire to keep staff or an emergency medical service vehicle in reserve to respond to other calls to which it has not already committed.

7. Patient management. All aspects of patient management are to be handled by an emergency medical service provider with the level of licensure necessary to care for the patient based upon the condition of the patient.
8. Use of lights and other warning devices. Ground emergency medical service vehicles may not use emergency lights or audible warning devices unless they do so in accordance with the standards imposed under chapter 39-10 of the North Dakota Century Code and are transporting or responding to a call involving a patient who presents, or is in good faith perceived to present, a combination of circumstances resulting in a need for immediate medical intervention. Emergency lights and audible warning devices may be used on an ambulance when transporting a patient only when medical intervention is required to receive time-sensitive, lifesaving interventions beyond what can be provided in an ambulance.
9. Explosives. Explosives may not be carried aboard an emergency medical service vehicle. This subsection does not apply to law enforcement officers who are serving in an authorized law enforcement capacity.
10. Accident, injury, and fatality reporting. An emergency medical service agency shall report to the department, in a form or electronically, as prescribed by the department, an emergency medical service vehicle accident that is reportable under chapter 39-08 of the North Dakota Century Code and an accident or injury to an individual that occurs in the line of duty of the emergency medical service agency that results in a fatality or medical treatment by a licensed health care practitioner. The report shall be made within twenty-four hours after the accident or injury. The report of a fatality shall be made within eight hours after the fatality.
11. Safety and quality improvement. An emergency medical service agency shall have a mechanism to address safety issues and quality improvement. This may be in the form of a committee or committees or other format that meets the need of the emergency medical service agency.
12. Emergency medical service provider credentialing. The emergency medical service agency shall maintain a record of the emergency medical service agency medical director's assessments and recommendations for emergency medical service provider credentialing. An emergency medical service agency may not permit an emergency medical service provider at or above the emergency medical technician level to provide emergency medical services at the emergency medical service provider's licensure level if the emergency medical service agency medical director determines that the emergency medical service provider has not demonstrated the knowledge and skills to competently perform the skills within the scope of practice at that level or the commitment to adequately perform other functions relevant to an emergency medical service provider providing emergency medical services at that level. Under these circumstances, an emergency medical service agency may continue to permit the emergency medical service provider to provide emergency medical services for the emergency medical service agency only in accordance with the restrictions as the emergency medical service agency medical director may prescribe. The emergency medical service agency shall notify the department within ten days after it makes a decision to allow an emergency medical service provider to practice at a lower level based upon the assessment of the emergency medical service provider's skills and other qualifications by the emergency medical service agency medical director, or a decision to terminate the emergency medical service agency's use of the emergency medical service provider based upon its consideration of the emergency medical service agency medical director's assessment.
13. Display of license and registration certificates. The emergency medical service agency shall display its license certificate in a public and conspicuous place in the emergency medical service agency's primary operational headquarters.

14. Monitoring compliance. An emergency medical service agency shall monitor compliance with the requirements that the emergency medical services statutes and rules impose upon the emergency medical service agency and its staff. An emergency medical service agency shall file a written report with the department if it determines that an emergency medical service provider or emergency medical service vehicle operator who is on the staff of the emergency medical service agency, or who has recently left the emergency medical service agency, has engaged in conduct not previously reported to the department, for which the department may impose disciplinary action. The duty to report pertains to conduct that occurs during a period of time in which the emergency medical service provider or emergency medical service vehicle operator is functioning for the emergency medical service agency.
15. Policies and procedures. An emergency medical service agency shall maintain policies and procedures ensuring that each of the requirements imposed under this section, as well as any requirements imposed by statute, rules, or internal policy are satisfied by the emergency medical service agency and its staff.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-25. General standards for providing emergency medical services.

Regardless of the type of service through which an emergency medical service agency is providing emergency medical services, the following standards apply to the emergency medical service agency and its emergency medical service providers when functioning as an emergency medical service provider on behalf of an emergency medical service agency, except as otherwise provided in this section:

1. An emergency medical service provider who encounters a patient before the arrival of other emergency medical service providers shall attend to the patient and begin providing emergency medical services to the patient at that emergency medical service provider's skill level.
2. An emergency medical responder may not be the emergency medical service provider who primarily attends to a patient unless another higher-level emergency medical service provider is not present or all other emergency medical service providers who are present are attending to other patients. An emergency medical responder may not attend to a patient during transport unless another higher-level emergency medical service provider is present.
3. Except as set forth in subsection 2, or unless there are multiple patients and the emergency medical services needs of other patients require otherwise, among emergency medical service providers who are present, an emergency medical service provider who is certified at or above the emergency medical services skill level required by the patient shall be the emergency medical service provider who primarily attends to the patient.
4. If a patient requires emergency medical services at a higher skill level than the skill level of the emergency medical service providers who are present, unless there are multiple patients and the emergency medical services needs of other patients require otherwise, an emergency medical service provider who is licensed at the highest emergency medical services skill level among the emergency medical service providers who are present shall be the emergency medical service provider who primarily attends to the patient.
5. A member of the emergency medical service vehicle crew with the highest level of emergency medical service provider licensure shall be responsible for the overall management of the emergency medical services provided to the patient or patients by the members of that emergency medical service vehicle crew. If more than one member of the emergency medical

service vehicle crew is an emergency medical service provider above the advanced emergency medical technician level, any of those emergency medical service providers may assume responsibility for the overall management of the emergency medical services provided to the patient or patients by the members of that emergency medical service vehicle crew.

6. If an emergency medical service vehicle crew needs additional assistance in attending to the needs of a patient or patients, it shall contact a public safety answering point or its emergency medical service agency dispatch center to request that assistance.

7. Except as otherwise provided in rule, a ground ambulance service shall operate twenty-four hours per day seven days per week, each type of service it is licensed to provide at each location it is licensed to operate that service.

8. A member of an emergency medical service vehicle crew who responds to a call in a personal vehicle may not transport in that vehicle medications, equipment, or supplies that an emergency medical technician is not authorized to use.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-02
BASIC LIFE SUPPORT GROUND AMBULANCE LICENSE

Section

<u>33-11-02-00.1</u>	<u>Purpose</u>
33-11-02-01	Training Standards for Ambulance Driver <u>Emergency Medical Service Vehicle Operator</u>
33-11-02-02	Training Standards for Primary Care Provider <u>Staffing</u>
33-11-02-03	Minimum Equipment Requirements
33-11-02-04	Medical Direction
33-11-02-05	Basic Life Support Ambulance Performing Advanced Life Support Interventions

33-11-02-00.1. Purpose.

An emergency medical service agency that operates a basic life support ambulance service employs one or more basic life support ambulances staffed by an ambulance crew capable of providing medical assessment, observation, triage, monitoring, treatment, and transportation of patients who require emergency medical services at or below the skill level of an emergency medical technician or equivalent.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-02-01. ~~Training standards~~Standards for ambulance driveremergency medical service vehicle operator.

~~By July 1, 2011, drivers must have successfully completed an emergency vehicle operations course as defined in chapter 33-36-01. After July 1, 2011, new drivers must complete the~~The emergency medical service vehicle ~~operations course within one year of joining the ambulance service.~~
~~In addition, the driver~~operator shall have a current driver's license, cardiopulmonary resuscitation certification, ~~unless there are two primary care providers as defined in section 33-11-02-02 or one primary care provider plus one other person with a current cardiopulmonary resuscitation certification providing care to the patient~~and emergency vehicle operators training.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 2003; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-02-02. ~~Training standards for primary care provider~~Staffing.

The primary care provider must have current emergency medical technician license or its equivalent and must have current cardiopulmonary resuscitation certification.

1. The minimum staffing for a basic life support ambulance crew when responding to a call to provide emergency medical services and transporting a patient is:

a. An emergency medical service provider at or above the emergency medical technician level; and

b. An emergency medical service vehicle operator.

2. For the purposes of this section, an emergency medical service provider at or above the emergency medical technician level includes an emergency medical technician, advanced emergency medical technician, or paramedic or a physician assistant, nurse practitioner, or

registered nurse that has been authorized by the emergency medical service agency medical director to function as an emergency medical service provider.

3. Responding ambulance crew members may arrive at the scene separately, but the ambulance shall be fully staffed at or above the required minimum staffing level before transporting a patient.

4. Providing emergency medical service when dispatched with a higher-level emergency medical service vehicle crew. If a basic life support ambulance and a higher-level emergency medical service vehicle crew are dispatched to provide emergency medical services for a patient, the following shall apply:

a. Basic life support ambulance crew members shall begin providing emergency medical services to the patient at their skill levels, including transportation of the patient to a receiving facility if the ambulance crew determines transport is needed, until a higher level of emergency medical services is afforded by the arrival of a higher-level emergency medical service provider.

b. Upon the arrival of a higher-level emergency medical service vehicle crew, the basic life support ambulance shall continue transporting the patient or release the patient to be transported by the higher-level emergency medical service vehicle crew, consistent with local emergency medical service protocols, as directed by the emergency medical service provider exercising primary responsibility for the patient.

c. The basic life support ambulance crew shall reassume primary responsibility for the patient if that responsibility is relinquished back to that ambulance crew by the emergency medical service provider of the higher-level emergency medical service vehicle crew who had assumed primary responsibility for the patient.

d. A basic life support ambulance and its ambulance crew may transport from a receiving facility a patient who requires emergency medical services above the skill level at which the ambulance is operating, if the sending or a receiving facility provides a registered nurse, nurse practitioner, physician assistant, or physician to supplement the ambulance crew, that individual brings on board the ambulance equipment and supplies to provide the patient with emergency medical services above the emergency medical service level at which the basic life support ambulance is operating to attend to the emergency medical services needs of the patient during the transport, and that individual attends to the patient during the patient transport.

5. Application. For purposes of this section, the term "higher-level of emergency medical service" means the emergency medical service vehicle crew of a basic life support ambulance performing advanced life support interventions as defined in section 33-11-02-06, an advanced life support ambulance, or air ambulance.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-02-03. Minimum equipment requirements.

In addition to a vehicle as described in section 33-11-01-15, the ambulance shall have the following, unless otherwise approved by the department:

1. Patient transport:

a. Mounted ambulance cot with retaining straps.

_____ ~~2.b.~~ Stretchers with retaining straps. Vehicle design dictates quantity.

_____ 2. Spinal stabilization:

_____ a. One adult long backboard, with retaining straps.

_____ b. One seated spinal immobilization device, with retaining straps.

_____ c. One pediatric-safe transport device.

_____ d. One adult cervical collar.

_____ e. One pediatric cervical collar.

_____ 3. Oxygen delivery:

_____ ~~3.a.~~ Piped oxygen system - with appropriate regulator and flow meter, or two "E" size bottles for minimum oxygen supply with regulator and flowmeter.

_____ ~~4.b.~~ Portable oxygen unit with carrying ~~case. To include device, including~~ one "D" size bottle with another "D" bottle in reserve.

_____ ~~5.c.~~ Three ~~nasal~~adult cannulas, ~~three nonrebreather oxygen masks in adult and pediatric sizes, and three sets of oxygen supply tubing.~~

_____ d. Three pediatric nasal cannulas.

_____ e. Three adult nonrebreather oxygen masks.

_____ f. Three pediatric nonrebreather oxygen masks.

_____ g. Three sets of oxygen supply tubing.

_____ h. Noninvasive positive pressure ventilation device.

_____ i. Nebulizer with tubing.

_____ ~~6.4.~~ Suction ~~--wall-mounted and portable--~~:

_____ a. Wall-mounted suction capable of achieving ~~400 mmhg/4 seconds or less with one~~ minimum of four hundred millimeters of mercury vacuum within four seconds or less after clamping the suction tube.

_____ b. Portable suction capable of achieving a minimum of four hundred millimeters of mercury vacuum within four seconds or less after clamping the suction tube.

_____ c. One rigid tonsil tip suction catheter, ~~one.~~

_____ d. One flexible suction catheter between size six and ten french, ~~and one.~~

_____ e. One flexible suction catheter between twelve and sixteen french.

_____ 5. Airway adjuncts:

_____ a. One set of adult sizes nasopharyngeal airways.

_____ b. One set of pediatric sizes nasopharyngeal airways.

_____ c. One set of adult sizes oropharyngeal airways.

d. One set of child sizes oropharyngeal airways.

e. One set of infant sizes oropharyngeal airways.

f. Alternative airway devices such as a supraglottic airway as approved by local medical direction.

7.6. Bag valve masks:

a. One adult bag valve mask resuscitation unit with face mask.

b. One child bag valve mask resuscitation unit with face mask.

c. One infant bag valve mask resuscitation unit with face mask.

~~8. Spine boards -- one adult long backboard and one seated spinal immobilization device, with retaining straps. In addition, by July 1, 2011, each ambulance shall have one pediatric long backboard.~~

7. Splinting:

9.a. Adult commercial fracture splints usable for open and closed fractures, or padded boards.

b. Pediatric commercial fracture splints usable for open and closed fractures, or padded boards.

c. Adult lower extremity traction splint.

d. Pediatric lower extremity traction splint.

8. Environmental:

10.a. Four cold packs.

b. Four hot packs.

~~11. Fire extinguisher -- dry chemical, mounted, five pound [2.27 kilogram] minimum.~~

~~12. Head-to-board immobilization devices in adult and pediatric sizes.~~

~~13. Obstetrical kit -- disposable or sterilizable that includes an infant bulb suction device and a receiving blanket with head cover.~~

~~14. Activated charcoal.~~

9. Bandaging and bleeding control:

15.a. Two sterile burn sheets or equivalent.

16.b. Three triangular bandages or commercial slings.

17.c. Two trauma dressings - approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].

18.d. Twenty-five sterile gauze pads - approximately four inches [10.16 centimeters] by four inches [10.16 centimeters].

- ~~19.e.~~ Twelve soft roller self-adhering type bandages - approximately five yards [4.57 meters] long.
- ~~20.~~ One set of nasopharyngeal airways in adult and child sizes.
- ~~21.~~ One set of oropharyngeal airways in adult, child, and infant sizes.
- ~~22.f.~~ Two sterile occlusive dressings approximately three inches [76.2 millimeters] by nine inches [228.6 millimeters].
- g. Two commercial "tactical" tourniquets.
- ~~23.~~ Four rolls of tape – assorted sizes.
- ~~24.~~ Shears – blunt – two minimum.
- ~~25.~~ Bedpan, emesis basin, urinal.
- ~~26.~~ One gallon [3.79 liters] of distilled water or saline solution.
- ~~27.~~ Intravenous fluid holder – cot mounted or ceiling hooks.
- ~~28.~~ Flashlights – two minimum.
- ~~29.~~ One sharps container less than half full.
- ~~30.~~ Three red biohazard bags.
- ~~31.~~ Cervical collars in adult, child, and infant sizes.
- ~~32.~~ Two blankets, four sheets, two pillows, four towels.
- ~~33.~~ Phenol disinfectant product, such as lystophene or amphyt.
- ~~34.~~ Reflectorized flares for securing scene – set of three minimum.
- ~~35.~~ Automatic defibrillator.
- 10. Diagnostic:
- ~~36.a.~~ Blood~~Adult blood~~ pressure manometer, cuff in child, adult, and large adult sizes, and stethoscope.
- b. Large adult blood pressure cuff.
- c. Child blood pressure cuff.
- d. Stethoscope.
- e. Pulse oximeter.
- f. Glucose measuring device.
- g. Penlight.
- h. Thermometer.
- ~~37.~~ One adult lower extremity traction splint. In addition, by July 1, 2011, each ambulance shall have one pediatric lower extremity traction splint.

~~38. Radio with the capability of meeting state emergency medical services standards as determined by the department.~~

~~39. Glucose or glucose – one dose for oral use.~~

11. Medications:

a. Three oral doses of glucose or glucose.

b. One small bottle, chewable aspirin.

c. Epinephrine, auto-injector for adult and pediatric doses or intramuscular, including syringes and needles for intramuscular delivery, if approved by medical director.

d. Naloxone, auto-injector (0.8 mg) or intranasal (4 mg - nasal spray, or syringe and atomizer).

~~40:12. Disposable~~ Personal protective equipment:

a. One size small box of nitrile gloves ~~– one box each of small,~~

b. One size medium, ~~and~~ box of nitrile gloves.

c. One size large ~~sizes~~ box of nitrile gloves.

~~41. Four disposable hot packs.~~

~~42.d. Personal protection equipment including fitted~~ Box of surgical masks,.

e. N95 masks, in small, medium, and large sizes and at least one per crew member.

f. Four nonabsorbent gowns, ~~and~~.

g. Four pairs of protective eyewear ~~– minimum of four.~~

13. Cleaning and biological:

a. Three red biohazard bags.

~~43.b.~~ Biological fluid cleanup kit.

c. One sharps container, that is less than half full.

d. Medical grade disinfectant.

e. One gallon [3.79 liters] of distilled water or saline solution.

f. One bedpan.

g. One emesis basin.

h. One urinal.

i. One container of nonwater hand disinfectant.

14. Safety:

a. Two reflective vests.

b. A minimum set of three reflectorized flares.

c. Two flashlights.

d. A minimum of two dry chemical, mounted, five-pound [2.27-kilogram] fire extinguishers located in patient compartment and in either cab or exterior compartment.

e. Helmet, protective safety glasses or goggles eyewear, and leather or extrication gloves per crew member.

f. Two window and glass punches located in patient compartment and in cab.

15. Communications:

a. Radio, compatible with local communications system.

b. Portable, hand-held radio, rechargeable, battery-operated, compatible with local communications system.

16. Other:

a. Automated external defibrillator.

~~44.~~b. Twenty-five triage tags.

~~45. Pulse oximeter.~~

~~46.~~c. Appropriate ~~pediatric~~Pediatric reference material ~~or pediatric weight-based and length-based~~for equipment sizing and ~~drug dosage chart or tape~~medication dosing.

~~47. Reflective vests – minimum of two.~~

d. Four assorted sizes rolls of tape.

e. Two blunt shears.

f. Cot-mounted or ceiling hooks intravenous fluid holder.

g. Two blankets.

h. Four sheets.

i. Four towels.

j. Disposable or sterilizable that includes an infant bulb suction and receiving blanket with head cover obstetrical kit.

k. One current edition of the Emergency Response Guidebook.

l. Alcohol or iodine swabs.

m. Water-soluble lubricant.

n. Razor.

History: 33-11-01-11; redesignated effective March 1, 1985; amended effective February 1, 1989; August 1, 1994; August 1, 2003; January 1, 2006; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

**CHAPTER 33-11-03
ADVANCED LIFE SUPPORT GROUND AMBULANCE LICENSE**

Section

<u>33-11-03-00.1</u>	<u>Purpose</u>
33-11-03-01	Minimum Standards for Personnel Staffing
33-11-03-02	Minimum Equipment Standards
33-11-03-03	Minimum Medication Requirements
33-11-03-04	Medical Direction
33-11-03-05	Number of Ambulances Staffed
33-11-03-06	Advertising Restrictions

33-11-03-00.1. Purpose.

An emergency medical service agency that operates an advanced life support ambulance service employs one or more advanced life support ambulances staffed by an ambulance crew capable of providing medical assessment, observation, triage, monitoring, treatment, and transportation of patients who require emergency medical services above the skill level of an advanced emergency medical technician.

History: Effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-03-01. ~~Minimum standards for personnel~~Staffing.

1. The minimum staffing requirement for an advanced life support licensed ground ambulance must consist of a paramedic or equivalent and an emergency medical technician or equivalent. If the crew consists of three or more personnel, the paramedic and emergency medical technician crew may have ~~a CPR-trained driver. By July 1, 2011, drivers must have successfully completed an emergency vehicle operations course as defined in chapter 33-36-01. After July 1, 2011, new drivers must complete the emergency vehicle operations course within one year of joining the ambulance service~~an emergency medical service vehicle operator as defined in section 33-11-01.2-01 as a third crew member.
2. The primary care provider, whose duties include an assessment of each patient, must hold current cardiopulmonary resuscitation certification and be a licensed paramedic or its equivalent, ~~or be a licensed registered nurse currently licensed as an emergency medical technician or its equivalent who has a current American heart association advanced cardiac life support certification or its equivalent,~~ with the following exceptions:
 - a. If, based on the paramedic's, or its equivalent's, assessment findings, a patient's condition requires only basic life support, an emergency medical technician or its equivalent may assume primary care of the patient.
 - b. For scheduled basic life support transfers with a crew of two personnel, the driver and the primary care provider must be at least licensed emergency medical technicians or its equivalent.
 - ~~c. For scheduled basic life support transfers with a crew of three or more personnel, the crew may have a CPR-trained driver.~~
3. Responding ambulance crew members may arrive at the scene separately, but the ambulance shall be fully staffed at or above the minimum staffing level before transporting a patient.
4. Providing emergency medical services when dispatched with a lower-level emergency medical service vehicle crew. If an advanced life support ambulance and a lower-level emergency

medical service vehicle crew are dispatched to provide emergency medical services for a patient, the following shall apply:

- a. Upon arrival of an emergency medical service provider from the advanced life support ambulance crew who is a higher-level emergency medical service provider than the highest-level emergency medical service provider of the lower-level emergency medical service vehicle crew who is present, that emergency medical service provider shall assume primary responsibility for the patient.
- b. If the patient is assessed by the advanced life support ambulance crew to require emergency medical services above the skill level at which the lower-level emergency medical service vehicle crew is operating, and requires transport to a receiving facility, the emergency medical service provider who is responsible for the overall management of the emergency medical services provided to the patient shall decide, consistent with local emergency medical service protocols, who will transport the patient. An appropriately licensed member of the advanced life support ambulance crew shall attend to the patient during the transport. If the lower-level emergency medical service vehicle is used to transport the patient, that emergency medical service provider shall use the equipment and supplies on the lower-level emergency medical service vehicle, supplemented with the additional equipment and supplies, including medications, from the advanced life support ambulance.
- c. If at the scene or during patient transport by the lower-level emergency medical service vehicle crew, the emergency medical service provider of the advanced life support ambulance crew who has assumed primary responsibility for the patient determines that the lower-level emergency medical service vehicle crew is operating at the skill level needed to attend to the patient's emergency medical services needs, consistent with local emergency medical service protocols, that emergency medical service provider may relinquish responsibility for the patient to the lower-level emergency medical service vehicle crew.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-03-02. Minimum equipment standards.

The ambulance must contain all the equipment requirements as found in section 33-11-02-03, except oral glucose or glucose for having an automated external defibrillator, unless the required manual cardiac monitor is not able to function as an automated external defibrillator, plus the following, unless otherwise approved by the department:

- ~~1. Manual cardiac monitor defibrillator with transcutaneous pacer and pediatric capabilities.~~
- ~~2. Portable radio. Rechargeable battery operated capable of reaching law enforcement and hospitals.~~
- ~~3. Nebulizer with tubing.~~
- ~~4. Endotracheal airway equipment in pediatric and adult sizes.~~
- ~~5. Laryngoscope with straight blade sizes zero, one, two, and three or four. Also curved blade sizes two and three or four.~~
- ~~6. Stylettes, one pediatric and one adult.~~

- ~~7. Meconium aspirator adaptor.~~
 - ~~8. Magill forceps, one pediatric and one adult.~~
 - ~~9. Intravenous therapy equipment. Catheters, intraosseous needles, tubing solutions, for both pediatric and adult patients as approved by medical director.~~
 - ~~10. Glucose measuring device.~~
 - ~~11. Syringes and needles.~~
 - ~~12. Alcohol swabs. Betadine swabs.~~
 - ~~13. Electrocardiogram supplies. Rolls of electrocardiogram paper, monitor electrodes and defibrillator pads.~~
 - ~~14. Pediatric weight and length based drug dosage chart or tape~~Oxygen delivery. End-tidal carbon dioxide detectors with pediatric and adult capability.
- 2. Suction. One meconium aspirator adaptor.
 - 3. Airway adjuncts:
 - a. Adult endotracheal airway equipment.
 - b. Pediatric endotracheal airway equipment.
 - c. One size zero straight laryngoscope blade.
 - d. One size one straight laryngoscope blade.
 - e. One size two straight laryngoscope blade.
 - f. One size three or four straight laryngoscope blade.
 - g. One size two curved laryngoscope blade.
 - h. One size three or four curved laryngoscope blade.
 - i. One adult stylette.
 - j. One pediatric stylette.
 - k. One pair of adult Magill forceps.
 - l. One pair of pediatric Magill forceps.
 - m. One adult laryngoscope handle with extra batteries.
 - n. One pediatric laryngoscope handle with extra batteries.
 - 4. Diagnostic:
 - a. Manual cardiac monitor defibrillator with transcutaneous pacing, waveform capnography and pediatric capabilities.
 - b. Monitor electrocardiogram paper rolls.
 - c. Monitor electrodes.

d. Adult defibrillator pads.

e. Pediatric defibrillator pads.

5. Medication delivery:

a. Intravenous therapy equipment, including venous restriction device, micro and macro drip administration sets, catheters from sixteen gauge to twenty-four gauge, intraosseous needles, tubing, solutions, and intravenous arm boards for both pediatric and adult patients, as approved by local medical direction.

b. Syringes and needles.

History: Effective March 1, 1985; amended effective August 1, 1994; August 1, 2003; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-03-03. Minimum medication requirements.

The ambulance must carry the following functional classification of medications in pediatric and adult dosages:

1. Alkalinizer agent.
2. Bronchodilator - adrenergic intravenous or subcutaneous.
3. Bronchodilator for nebulized delivery.
4. Antidysrhythmic or antiarrhythmic.
- ~~4:5.~~ Anticholinergen parasympatholitic.
- ~~5:6.~~ Opioid antagonist.
- ~~6:7.~~ Coronary vasodilator, antianginal.
- ~~7:8.~~ ~~Antianxiety~~ Anxiolytic.
- ~~8:9.~~ ~~Galor~~ Dextrose containing solution.
- ~~9:10.~~ Anticonvulsant.
- ~~10.~~ ~~Bronchodilator.~~
11. ~~Narcotic~~ Analgesic.
12. Antiemetic.

History: Effective March 1, 1985; amended effective August 1, 1994; August 1, 2003; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-03-05. Number of ambulances staffed.

~~Unless the advanced life support ambulance service has a system status management program as defined in this chapter in place that is approved by the department, the number of advanced life support ambulances staffed, either by on-call or in-house staff, by the licensed ambulance service is dependent upon the population of the city in which the ambulance is based.~~

- ~~1. For cities with a population less than fifteen thousand, one advanced life support ambulance must be staffed. Additional ambulances may be required to meet the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.~~
- ~~2. For cities with populations between fifteen thousand one and fifty-five thousand, two advanced life support ambulances must be staffed. Additional ambulances may be required to meet the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.~~
- ~~3. For cities with populations greater than fifty-five thousand, three advanced life support ambulances must be staffed. Additional ambulances may be required to meet the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.~~
One advanced life support ambulance must be staffed. Additional ambulances may be required to meet community needs, demand, or the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-04

33-11-04-01. Definitions.

1. "Air ambulance run" means the response of an aircraft and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation, or both, to someone who is sick or injured. Includes canceled calls, no transports, and standby events where medical care may be rendered.
2. "Aircraft" means either an airplane also known as a fixed-wing, or a helicopter also known as a rotor-wing.
3. ~~"Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent, which includes the following skills: adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.~~
- ~~4.~~ "Commission on accreditation of medical transport systems" means ~~the commission on accreditation of medical transport systems located in Anderson, South Carolina~~ a nationally recognized body for accreditation of air medical transportation systems.
- ~~5.4.~~ "Department" means the ~~state~~ department of health ~~as defined in North Dakota Century Code chapter 23-04~~ and human services.
- ~~6.~~ "Emergency medical technician" means ~~a person who meets the requirements of the state emergency medical technician program and is licensed by the department.~~
- ~~7.5.~~ "Equivalent" means ~~training or equipment of equal or greater value which accomplishes the same results as determined by the department~~ qualifications reasonably comparable to those specifically listed as required for training, certification, licensure, credentialing, or recognition.
- ~~8.~~ "Paramedic" means ~~a person who is certified by the national registry of emergency medical technicians and licensed by the department as a paramedic.~~
- ~~9.6.~~ "Personnel" means ~~qualified primary care providers within an air ambulance service~~ an individual maintained on an air ambulance roster.
- ~~10.~~ "Primary care provider" means ~~a qualified individual responsible for care of the patient while on an air ambulance run.~~

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-02. License required - Fees.

1. No air ambulance service as defined in North Dakota Century Code chapter 23-27 shall be advertised or offered to the public or any person unless the operator of such air ambulance service is licensed by the department.
2. The license shall expire midnight on October thirty-first of the even year following issuance. ~~License renewal shall be on a biennial basis~~ The department shall relicense for a two-year period, expiring on October thirty-first, an air ambulance service successfully meeting the requirements of the North Dakota air ambulance licensure program.

3. A license is valid only for the service for which it is issued. A license may not be sold, assigned, or transferred.
4. The license shall be displayed in a conspicuous place inside the patient compartment of the aircraft. An operator operating more than one aircraft out of a town, city, or municipality will be issued duplicate licenses for each aircraft at no additional charge.
5. The biennial license fee shall be fifty dollars for each air ambulance service operated.

History: Effective August 1, 2003; amended effective January 1, 2008; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-03. Application for license.

An application for an air ambulance service license shall be submitted on a form or through an electronic process, as prescribed by the department. The application must contain the following information as well as additional information and documents that may be solicited by the application form:

~~1. Application for the license shall be made in the manner prescribed by the department.~~

~~2. The application must be made for either basic life support air ambulance service as defined in chapter 33-11-05, advanced life support air ambulance service as defined in chapter 33-11-06, or for critical care air ambulance service as defined in chapter 33-11-07~~Contact information:

a. The name, mailing address, and electronic mail address of the applicant.

b. A primary contact person, including telephone number, to be reached twenty-four hours per day seven days per week.

2. The name under which the applicant will be holding itself out to the public in conducting its emergency medical service operations and the address of its primary location in this state out of which it will be conducting its emergency medical service operations.

a. If the applicant seeks to conduct emergency medical service agency operations out of more than one location, the address of its primary operational headquarters and each other location out of which it intends to operate must also be provided.

b. If the applicant will be holding itself out to the public under different fictitious names for the emergency medical service operations it will conduct at different locations, the fictitious name under which it intends to operate at each location.

3. The manner in which the applicant is organized.

4. The tax status of the applicant.

5. An up-to-date roster of active personnel.

6. The number and types of aircraft to be operated by the applicant and identifying information for each aircraft.

7. The communication access and capabilities of the applicant.

8. A full description of the emergency medical service agency services that it intends to provide out of each location and how it intends to respond to flight transport requests.

9. The names, titles, and summary of responsibilities of individuals who will be staffing the emergency medical service operation as officers, directors, or other emergency medical service agency officials.

10. A statement attesting to the veracity of the application, which must be signed by the principal official of the applicant.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-04. Issuance and renewal of licenses.

1. The department or its authorized agent may inspect the air ambulance service. If minimum standards ~~for either basic life support air ambulance services, advanced life support air ambulance services, or critical care air ambulance services~~ are met, the department shall issue a license.
2. A service may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of medical transport systems or its equivalent.
3. Services requesting their compliance with this chapter be verified through an accrediting agency shall submit to the department a copy of the entire accrediting agency survey report. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-05. Availability of air ambulance services.

~~Basic life support air ambulance services may be available as needed per licensee's discretion. Advanced life support air ambulance services and critical~~ Critical care air ambulance services shall be available twenty-four hours per day and seven days per week, except as limited by weather or aircraft maintenance or by unscheduled pilot duty limitations in accordance with federal aviation administration regulations.

History: Effective August 1, 2003; amended effective March 24, 2004; January 1, 2006; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-06. Number of personnel required.

~~For a licensed basic life support air ambulance service, the minimum number of personnel required is one primary care provider as defined in chapter 33-11-05. For a licensed advanced life support air ambulance service, the minimum number of personnel required is one primary care provider as defined in chapter 33-11-06, except when either the transferring or receiving physician believes the patient's status requires a minimum of two providers. For a licensed critical care air ambulance service, the minimum number of personnel required is two providers as defined in chapter 33-11-07~~ and one pilot.

History: Effective August 1, 2003; amended effective March 24, 2004; January 1, 2006; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-07. Out-of-state operators.

1. Operators ~~from licensed in~~ another state may pick up patients within ~~this state~~ North Dakota for transportation to locations within this state ~~when there is a natural disaster such as a tornado, flood, or other disaster which may require available air ambulances to transport the injured~~ under the following circumstances:
 - a. When there is a disaster or incident which may require elevated response to transport the injured.
 - b. When an out-of-state air ambulance is traveling through the state for whatever purpose comes upon an accident or medical emergency where immediate emergency air ambulance services are necessary.
2. Out-of-state air ambulance services that expect to pick up patients from within this state and transport to locations within this state shall meet the North Dakota standards and become licensed under North Dakota Century Code chapter 23-27 and this chapter.

History: Effective August 1, 2003; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-09. Securing of equipment.

All equipment and materials used in an air ambulance must be secured in accordance with ~~federal aviation administration regulation~~ title 14, Code of Federal Regulations, part 135.

History: Effective August 1, 2003; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-14. Medical direction.

1. Each air ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.
2. Each air ambulance service must have written treatment protocols for adult and pediatric medical conditions approved by the medical director and available for reference when providing patient care.
3. Air ambulance services must have a written process for accessing adult and pediatric online medical control that includes contacting a medical practitioner at a hospital that has continual in-house emergency room coverage or having the ability to directly contact the on-call emergency room medical practitioner while the practitioner is not at the hospital.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-15. Other requirements.

1. The aircraft ~~shall~~must have sufficient space to accommodate at least one pilot, one patient on a stretcher, two medical personnel, and the medical equipment required.

2. The aircraft must be configured to allow medical personnel to have a good patient view and access to equipment and supplies in order to initiate both basic and advanced life support.
3. All licensed air ambulance services shall keep the aircraft and other equipment clean and in proper working order.
4. All linens, and all equipment and supplies coming in direct contact with the patient, must be either a single-use disposable type or cleaned, laundered, or disinfected after each use.
5. When an aircraft has been utilized to transport a patient known to have a communicable disease ~~other than a common cold~~, the aircraft and all exposed equipment shall be disinfected before the transport of another patient.
6. Each air ambulance run must be reported to the department ~~in the manner and in the form determined by the department~~electronically via an electronic patient care record that is compatible with the North Dakota emergency medical service data repository within seventy-two hours.

History: Effective August 1, 2003; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

**CHAPTER 33-11-05
BASIC LIFE SUPPORT AIR AMBULANCE LICENSE**

[Repealed effective January 1, 2024]

Section

~~33-11-05-01 Training Standards for Primary Care Provider~~

~~33-11-05-02 Minimum Equipment Requirements~~

**CHAPTER 33-11-06
ADVANCED LIFE SUPPORT AIR AMBULANCE LICENSE**

[Repealed effective January 1, 2024]

Section

- ~~33-11-06-01 — Training Standards for Primary Care Provider~~
- ~~33-11-06-02 — Minimum Equipment Requirements~~
- ~~33-11-06-03 — Advertising Restrictions~~

CHAPTER 33-11-07

33-11-07-01. Training standards for care providers.

~~1.~~ Both care providers shall be critical care providers as listed in subsection 3 of section 33-11-01.2-12.

~~2.~~ Notwithstanding subsection 1, elective transports for patients that are in stable condition who do not require specialized interventions or equipment as described in section 33-11-01.2-12 may be staffed at a lesser level that meets the patient's care requirements and is at least at the level of basic life support air ambulance defined in section 33-11-05-01.

History: Effective January 1, 2006; amended effective April 1, 2009; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-07-02. Minimum equipment requirements.

~~All equipment required for a basic life support air ambulance as found in section 33-11-05-02 and all equipment required for an advanced life support air ambulance found in section 33-11-06-02 plus the following equipment must be available at the base station.~~ In addition to an aircraft as described in subsection 3 of section 33-11-04-01, the air ambulance shall have the following, unless otherwise approved by the department:

~~1. Ventilator.~~

~~2. Intravenous infusion pumps.~~

~~3. Any specialized equipment ordered by a physician.~~ Patient litter or stretcher for patient transport.

2. Spinal immobilization:

a. One pediatric-safe transport device.

b. One adult cervical collar.

c. One pediatric cervical collar.

3. Oxygen delivery:

a. An onboard oxygen system, with the following:

(1) Cylinders with a capacity of one thousand two hundred liters.

(2) The cylinders must have at least one thousand six hundred fifty pounds per square inch [11376.35 kilopascals] at the time of inspection.

(3) A flow meter with a range of zero to twenty-five liters per minute delivery.

b. Two D size oxygen cylinders or one D size oxygen cylinder and an onboard system capable of providing, at a minimum, an additional four hundred fifteen liters of oxygen.

c. Nonsparking wrench or tank opening device.

d. Gauge or flow meter not gravity dependent and can deliver between zero and twenty-five liters per minute.

- e. Three adult nasal cannulas.
- f. Three pediatric nasal cannulas.
- g. Three adult nonrebreather oxygen masks.
- h. Three pediatric nonrebreather oxygen masks.
- i. Three sets of oxygen supply tubing.
- j. Noninvasive positive pressure ventilation device.
- k. Nebulizer with tubing.
- l. End-tidal carbon dioxide detectors with pediatric and adult capability.
- m. Multifunction mechanical ventilator.

4. Suction:

- a. Portable suction unit with wide-bore tubing that is capable of achieving a minimum of three hundred millimeters of mercury vacuum within four seconds or less after clamping the suction tube or an aircraft suction system meeting the same or similar performance standards and a portable manual suction device.
- b. One rigid tonsil tip suction catheter.
- c. One flexible suction catheter between size six and ten french.
- d. One flexible suction catheter between twelve and sixteen french.

5. Airway adjuncts:

- a. One set of adult sizes nasopharyngeal airways.
- b. One set of pediatric sizes nasopharyngeal airways.
- c. One set of adult sizes oropharyngeal airways.
- d. One set of child sizes oropharyngeal airways.
- e. One set of infant sizes oropharyngeal airways.
- f. Alternative airway devices such as a supraglottic airway as approved by local medical direction.
- g. Adult endotracheal airway equipment.
- h. Pediatric endotracheal airway equipment.
- i. One size zero straight laryngoscope blade.
- j. One size one straight laryngoscope blade.
- k. One size two straight laryngoscope blade.
- l. One size three or four straight laryngoscope blade.
- m. One size two curved laryngoscope blade.

- n. One size three or four curved laryngoscope blade.
- o. One adult stylette.
- p. One pediatric stylette.
- q. One pair of adult Magill forceps.
- r. One pair of pediatric Magill forceps.
- s. One adult laryngoscope handle with extra batteries.
- t. One pediatric laryngoscope handle with extra batteries.
- 6. Bag valve masks:
 - a. One adult bag valve mask resuscitation unit with face mask.
 - b. One child bag valve mask resuscitation unit with face mask.
 - c. One infant bag valve mask resuscitation unit with face mask.
- 7. One pelvic stabilization device for splinting.
- 8. Environmental:
 - a. Four cold packs.
 - b. Four hot packs.
- 9. Bandaging and bleeding control:
 - a. Two sterile burn sheets or equivalent.
 - b. Three triangular bandages or commercial slings.
 - c. Two trauma dressings approximately ten by thirty-six inches [25.4 by 91.44 centimeters].
 - d. Twenty-five sterile gauze pads approximately four by four inches [10.16 by 10.16 centimeters].
 - e. Twelve soft roller self-adhering type bandages approximately five yards [4.57 meters] long.
 - f. Two sterile occlusive dressings approximately three by nine inches [76.2 by 228.6 millimeters].
 - g. Two commercial tactical tourniquets.
- 10. Diagnostic:
 - a. Manual cardiac monitor defibrillator with transcutaneous pacing, waveform capnography, and pediatric capabilities.
 - b. Monitor electrocardiogram paper rolls.
 - c. Monitor electrodes.
 - d. Adult defibrillator pads.

- e. Pediatric defibrillator pads.
- f. Adult blood pressure cuff.
- g. Large adult blood pressure cuff.
- h. Child blood pressure cuff.
- i. Stethoscope.
- j. Pulse oximeter.
- k. Glucose measuring device.
- l. Penlight.
- m. Thermometer.

11. Medication delivery:

- a. Four of each size and individually wrapped and sterile hypodermic needles size sixteen to eighteen gauge, twenty to twenty-two gauge, twenty-three to twenty-five gauge, and two hypodermic needles of assorted sizes, including at least one with a one milliliter volume.
- b. Intravenous therapy equipment, including venous restriction device, micro and macro drip administration sets, catheters size sixteen gauge to twenty-four gauge, intraosseous needles, tubing, solutions, and intravenous arm boards for both pediatric and adult patients, as approved by local medical direction.
- c. Two three and one-quarter inch [8.26 centimeters] over the needle catheter in ten, twelve, or fourteen gauge.
- d. Three intravenous infusion pumps or one multichannel unit capable of managing three simultaneous infusions.
- e. Two intravenous bag holders with straps.

12. Medications:

- a. Alkalinizing agent.
- b. Anxiolytic.
- c. Anticholinergen parasympatholytic.
- d. Anticonvulsants.
- e. Antidysrhythmic/antiarrhythmic.
- f. Antiemetic.
- g. Antihistamine.
- h. One small bottle of chewable aspirin.
- i. Adrenergic intravenous or subcutaneous bronchodilator or sympathomimetic.
- j. Adult and pediatric doses of epinephrine administered through an autoinjector or intramuscular, if approved by medical director. If epinephrine is administered

intramuscular the air ambulance shall have syringes and needles for intramuscular delivery.

k. Bronchodilator for nebulized delivery.

l. Dextrose containing solution.

m. Coronary vasodilator, antianginal.

n. Corticosteroid or glucocorticoid.

o. Opioid antagonist.

p. Analgesic.

q. Other medications may be carried as approved by the medical director.

13. Personal protective equipment:

a. Personal infection control kit, which includes the following:

(1) Eye protection, clear, and disposable for each crew member.

(2) Gown or coat for each crew member.

(3) Disposable surgical cap and foot coverings, for each crew member.

(4) Exam gloves for each crew member.

(5) Sharps containers and red bags per infectious control plan.

(6) N95 respirator for each crew member.

(7) Hand disinfectant for each crew member.

(8) Ten alcohol sponges.

14. Two liters of sterile water or normal saline.

15. Safety:

a. For rotor-wing aircraft, flight helmet with built-in communication for each crew member.

b. One survival bag.

c. One fully charged fire extinguisher rated at least 5 B:C securely mounted where it can be reached by the pilot or crew members. The fire extinguisher must be intact with safety seal, have been inspected within the previous twelve calendar months, and have the appropriate inspection tag attached.

16. Communications:

a. Two-way radio communications for the pilot to be able to communicate with hospitals, public safety answering points, and ground ambulances in areas to which the air ambulance routinely provides service.

b. For fixed-wing aircraft, at least one headset per crew member with built-in communication among the crew when the aircraft is operating and noise levels prevent normal conversation.

17. Other:

- a. Four assorted rolls of adhesive tape, with at least one hypoallergenic roll.
- b. One bandage shears.
- c. Pediatric length-based drug dosing and equipment sizing tape, most current version available.
- d. One sterile obstetrical kit.
- e. One separate sterile bulb syringe.
- f. One silver swaddler sterile thermal blanket or one roll of sterile aluminum foil for use on infants and newborns.
- g. Appropriate patient coverings capable of maintaining body temperature based on anticipated weather conditions.
- h. Two sterile water-soluble lubrication, two cubic centimeter or larger tubes.
- i. Copy of most current version of agency protocols, as approved by medical director.

History: Effective January 1, 2006; amended effective January 1, 2024.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

**CHAPTER 33-36-01
EMERGENCY MEDICAL SERVICES PERSONNEL TRAINING,
TESTING, CERTIFICATION, AND LICENSURE**

Section

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33-36-01-01. Definitions.

Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

1. "~~Accrediting agency~~Advanced emergency medical technician" means ~~the commission on accreditation on allied health education programs or its equivalent~~an individual certified by the national registry as an advanced emergency medical technician. An advanced emergency medical technician is eligible for licensure as an advanced emergency medical technician upon completion of a license application and approval by the department.
2. "Cardiopulmonary resuscitation", initial and refresher, means the American heart association health care provider standards or its equivalent which includes the following skills: adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant one-person and two-person cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.
3. "~~Certification scope enhancement programs~~" means ~~those certification programs which add additional skills to or refresh existing skills obtained from the primary certification programs.~~
- ~~4.~~ "~~Continuing education coordinator~~" means ~~an individual who is licensed to conduct limited courses including continuing education courses, refresher courses, and scope enhancement courses~~Clinical and field internship preceptor" means a qualified individual designated by an emergency medical services instructor or emergency medical services training institute to supervise a student during clinical or field internship training.
- ~~5.~~4. "Department" means the ~~state~~-department of health and human services.
- ~~5.~~ "Emergency medical services instructor" means an individual who is licensed to conduct emergency medical services courses, including continuing education courses.
6. "Emergency medical ~~services instructor~~technician" means an individual ~~who is licensed to conduct the full scope of courses including continuing education courses, refresher courses,~~

~~and scope enhancement courses, as well as initial primary education courses that include emergency medical responder, certified by the national registry as an emergency medical technician, emergency medical technician-intermediate/85, advanced. An emergency medical technician, emergency medical technician-intermediate/99, and paramedic is eligible for licensure as an emergency medical technician upon completion of a license application and approval by the department.~~

7. "Equivalent" means training of equal or greater value which accomplishes the same results ~~as determined by the department.~~

8. ~~"Field internship preceptor" means a qualified person designated by an emergency medical services instructor to supervise a student during field internship training.~~

~~9.~~ "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.

~~10.~~ 9. "On call" means that an individual is expected to be available for emergency response when called by telephone, mobile communications application, radio, or pager and report after notification.

~~11.~~ ~~"Prehospital emergency medical services personnel" are those persons certified or licensed under the programs defined in this chapter.~~

~~12.~~ ~~"Primary certification programs" means those certification programs which integrate a broad base of skills necessary to perform within a level of the emergency medical services system as determined by the department.~~

History: Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-02. Emergency medical services training courses.

The department ~~shall establish training, testing, and certification requirements for~~ acknowledges the following emergency medical services courses and personnel:

1. ~~Primary certification courses~~ Courses leading to national registry certification:

a. Emergency medical responder;

b. Emergency medical technician;

c. ~~Emergency medical technician-intermediate/85;~~

~~d. Emergency medical technician-intermediate/99;~~

~~e.~~ Advanced emergency medical technician; and

~~f. Advanced first-aid ambulance attendant;~~

~~g. Emergency vehicle operations;~~

~~h. Emergency medical dispatch; and~~

~~i. Automobile extrication~~

d. Paramedic.

2. ~~Certification scope enhancement courses:~~

- ~~a. Intravenous maintenance;~~
- ~~b. Automobile extrication instructor;~~
- ~~c. Emergency medical services instructor;~~
- ~~d. Epinephrine administration;~~
- ~~e. Dextrose administration;~~
- ~~f. Bronchodilator/nebulizer administration;~~
- ~~g. Limited advanced airway insertion;~~
- ~~h. Emergency vehicle operations instructor; and~~
- ~~i. Continuing education coordinator.~~

~~3. Certification refresher courses~~Courses requiring current department licensure that provide supplementary qualifications by the department:

- ~~a. Emergency medical responder-refresher;~~
- ~~b. Emergency medical technician-basic refresher;~~
- ~~c. Emergency medical technician-intermediate/85 refresher;~~
- ~~d. Emergency medical technician-intermediate/99 refresher;~~
- ~~e. Advanced emergency medical technician refresher; and~~
- ~~f. Paramedic refresher~~Emergency medical services instructor;
- b. Community emergency medical technician;
- c. Community advanced emergency medical technician; and
- d. Community paramedic.

History: Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-03. Training, testing, certification, and licensure standards for ~~primary certification courses~~emergency medical services personnel.

The department shall authorize ~~the conduct of all~~ courses, ~~the testing of students, and the certification or licensure of personnel when application has been made on forms requested from and provided~~ leading to approval, certification, or licensure by the department prior to ~~conducting~~ the course ~~and in the manner specified by the department~~ being conducted in North Dakota contingent upon the course being offered by a licensed emergency medical services training institute and on the following requirements:

1. Emergency medical responder:

a. ~~Curriculum Course. The~~ A course curriculum conducted in North Dakota must be that issued ~~adhere to the national emergency medical services education standards for emergency medical responders as published by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department. Prior to student eligibility for certification by the national registry, competency in the required knowledge and skills must be verified by a North Dakota emergency medical services instructor or North Dakota licensed emergency medical services training institute.~~

b. ~~Textbooks. The department shall approve textbooks.~~

~~c. Course coordinator~~ instructors. The course coordinator ~~Course instructors must be licensed~~ approved ~~by the department as an licensed~~ emergency medical services instructor ~~training institute and must be currently certified as an emergency medical responder or its equivalent~~ knowledgeable in course content, effective in teaching their assigned subjects, and capable through academic preparation, training, and experience to teach courses or topics to which they are assigned.

~~d.c.~~ An emergency medical responder student may practice all of the skills defined in the core scope of practice for emergency medical responder while in the classroom and during a clinical or field internship while under direct supervision of an instructor or clinical and field internship preceptor and if registered with the department as an emergency medical responder student.

~~e. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department or the national registry cognitive knowledge examination and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.~~

~~f.d.~~ Initial certification. The department shall issue initial certification to persons who meet the physical requirements described in the functional job analysis for emergency medical responder as published by the national highway traffic safety administration and are over the age of sixteen ~~Individuals sixteen years of age and older who have completed an authorized course and passed the testing process, or are certified as an emergency medical responder by the national registry~~ are eligible for certification by the department. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year, or ninety days past their national registry expiration date if they are nationally registered. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year, or ninety days past their national registry expiration date if they are nationally registered Upon completion and department approval of an application, eligible applicants may be certified by the department for a two-year period until June thirtieth of the second year.

~~g.e.~~ Recertification. The department shall recertify for a two-year period expiring on June thirtieth, or ninety days past their national registry expiration date if they are nationally registered, to those persons that meet the physical requirements described in the functional job analysis for emergency medical responder as published by the national highway traffic safety administration and who have met one of the following requirements:

~~(1) Completion of an approved North Dakota emergency medical responder refresher course.~~

~~(2) Completion of a twenty-four-hour emergency medical technician refresher course~~An individual that maintains certification from the national registry is eligible for recertification. Upon completion and approval of an application, eligible applicants may be recertified by the department for a two-year period until June thirtieth of the second year.

f. Individuals certified as emergency medical responders as of January 1, 2024, and those attending emergency medical responder courses approved before January 1, 2024, and certified by June 30, 2024, will not be required to obtain national registry certification.

(1) Prior to student eligibility for initial certification by the department under the conditions identified in this subdivision, competency in the required knowledge and skills must be verified by a North Dakota emergency medical services instructor or North Dakota licensed emergency medical services training institute.

(2) Prior to eligibility for recertification by the department under the conditions identified in this subdivision, individuals must complete recertification requirements equivalent to those required by the national registry.

2. Emergency medical technician:

a. ~~Curriculum Course. The~~A course curriculum conducted in North Dakota must be that issued~~adhere to the national emergency medical services education standards for emergency medical technicians as published by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~Prior to student eligibility for certification by the national registry, competency in the required knowledge and skills must be verified by a North Dakota emergency medical services instructor or North Dakota licensed emergency medical services training institute.

b. ~~Textbooks. The department shall approve textbooks.~~

~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent.~~

~~d. Course instructors. The primary course instructor~~Course instructors must be licensed~~approved by the department as an licensed~~emergency medical services instructor~~training institute and must be currently licensed as an emergency medical technician or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician or its equivalent~~knowledgeable in course content, effective in teaching their assigned subjects, and capable through academic preparation, training, and experience to teach courses or topics to which they are assigned.

~~e.c.~~An emergency medical technician student may practice all of the skills defined in the core scope of practice for emergency medical technician while in the classroom and during a clinical or field internship while under direct supervision of an instructor or the clinical and field internship preceptor and if registered with the department as an emergency medical technician student.

~~f. Testing. Students must pass the national registry cognitive knowledge examination and a practical examination specified by the department which meets the national registry's standards or its equivalent in order to be eligible for licensure. The content of the practical examination must be determined by the department, and the department shall establish policies regarding retesting of failed written and practical examinations.~~

~~g.d.~~ Emergency medical technician initial licensure. ~~The department shall issue initial licensure as an emergency medical technician to persons that meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and are over the age of sixteen~~Individuals sixteen years of age and older who have completed an authorized course and passed the testing process or those who have requested reciprocity from another state with equivalent training. Persons passing the testing process between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be licensed until June thirtieth of the third year~~are certified as emergency medical technicians by the national registry are eligible for licensure. Upon completion and department approval of a license application, eligible applicants may be licensed by the department. The applicant must be affiliated with a North Dakota licensed emergency medical services operation or obtain medical direction from a North Dakota licensed physician. Licensure will expire ninety days after the national registry emergency medical technician expiration date.~~

~~h.e.~~ Relicensure of emergency medical technicians. ~~The department shall relicense for a two-year period expiring June thirtieth those persons that meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who have met the following requirements:~~

~~(1) Completion of a twenty-four hour emergency medical technician-basic refresher course which includes a cardiopulmonary resuscitation health care provider refresher, answering correctly at least seventy percent of the questions on a written examination specified by the department and passing a local practical examination meeting the department's requirements; and~~

~~(2) Completion of forty-eight hours of continuing education as approved by the department or the national registry; or~~

~~(3) If currently licensed as an emergency medical technician, successful completion of the practical examination for emergency medical technician as established by the department. The practical examination must be administered by a licensed emergency medical services training institution in accordance with section 33-36-02-10 or by the department~~An individual that maintains certification from the national registry as an emergency medical technician is eligible for relicensure. Upon completion and approval of a license application, eligible applicants may be relicensed by the department. The applicant must be affiliated with a North Dakota licensed emergency medical services operation or obtain medical direction from a North Dakota licensed physician. Licensure will expire ninety days after the national registry expiration date.

~~3. Emergency medical technician-intermediate/85:~~

~~a. Student prerequisite certification. Students must be licensed as an emergency medical technician or its equivalent prior to testing.~~

~~b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~

~~c. Textbooks. The department shall approve textbooks.~~

- ~~d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.~~
- ~~e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.~~
- ~~f. An emergency medical technician-intermediate/85 student may practice all of the skills defined in the core scope of practice for emergency medical technician-intermediate/85 while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an emergency medical technician-intermediate/85 student.~~
- ~~g. Testing. Students must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.~~
- ~~h. Emergency medical technician-intermediate/85 initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.~~
- ~~i. Relicensure of emergency medical technician-intermediate/85. Emergency medical technician-intermediate/85 must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.~~
- ~~j. Transition to new licensure level. When the national registry discontinues certifying personnel at the emergency medical technician-intermediate/85 level, personnel currently licensed as an emergency medical technician-intermediate/85 must transition to a new licensure level. To remain licensed as an emergency medical services provider, each person must do one of the following options:
 - ~~(1) Complete a state-authorized transition course for emergency medical technician-intermediate/85 to advanced emergency medical technician and license as an advanced emergency medical technician as described in subsection 4.~~
 - ~~(2) Complete a state-authorized transition course for emergency medical technician-intermediate/85 to advanced emergency medical technician, as well as completing all of the certification requirements of the national registry for advanced emergency medical technician and license as an advanced emergency medical technician as described in subsection 4.~~
 - ~~(3) Complete the national registry requirements for emergency medical technician and license as an emergency medical technician as described in subsection 2.~~~~

- ~~4.~~ Advanced emergency medical technician:
- a. Student prerequisite ~~certification~~. Students must be licensed/certified as an emergency medical technician by the national registry or licensed as an emergency medical technician or its equivalent ~~prior to testing~~.
 - b. Curriculum Course. The course ~~curriculum~~ must be that issued/adhere to the national emergency medical services education standards for advanced emergency medical technicians as published by the United States department of transportation, national highway traffic safety administration, ~~in the edition specified by the department~~. Prior to student eligibility for certification by the national registry, competency in the required knowledge and skills must be verified by a North Dakota emergency medical services instructor or North Dakota licensed emergency medical services training institute.
 - c. ~~Textbooks. The department shall approve textbooks.~~
 - ~~d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an advanced emergency medical technician or its equivalent.~~
 - ~~e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an advanced emergency medical technician or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an advanced emergency medical technician or its equivalent.~~
 - ~~f. An advanced emergency medical technician student may practice all of the skills defined in the ~~core~~ scope of practice for advanced emergency medical technician while in the classroom and during a clinical or field internship while under direct supervision of an instructor or clinical and field internship preceptor and if registered with the department as an advanced emergency medical technician student.~~
 - ~~g. Testing. Students must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.~~
 - ~~h.d. Advanced emergency medical technician initial licensure. ~~Except as otherwise provided under subdivision j of subsection 3, a person~~An individual eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department ~~expiring~~is certified as an advanced emergency medical technician by the national registry is eligible for licensure. Upon completion and department approval of a license application, eligible applicants may be licensed by the department. The applicant must be affiliated with a North Dakota licensed emergency medical services operation or obtain medical direction from a North Dakota licensed physician. Licensure will expire ninety days after their/the national registry advanced emergency medical technician expiration date.~~
 - ~~i.e. Relicensure of advanced emergency medical technician. ~~Except as otherwise provided under subdivision j of subsection 3, an advanced emergency medical technician must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician~~~~

~~as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring~~An individual that maintains certification from the national registry as an advanced emergency medical technician is eligible for relicensure. Upon completion and approval of a license application, eligible applicants may be relicensed by the department. The applicant must be affiliated with a North Dakota licensed emergency medical services operation or obtain medical direction from a North Dakota licensed physician. Licensure will expire ninety days after ~~their~~the national registry advanced emergency medical technician expiration date.

~~j. Transitioning from emergency medical technician-intermediate/85. Notwithstanding subdivisions h and i of subsection 3, an emergency medical technician-intermediate/85 licensee may be licensed or relicensed as an advanced emergency medical technician without obtaining national registry certification if the requirements in subsection 3 have been met as well as maintaining compliance with chapter 50-03-03.~~

~~5. Emergency medical technician-intermediate/99:~~

~~a. Student prerequisite certification or license. A student must be licensed as an emergency medical technician or its equivalent prior to testing.~~

~~b. Curriculum. The course curriculum shall be that issued by the United States department of transportation, national highway traffic safety administration, in the addition specified by the department.~~

~~c. Textbooks. The department shall approve textbooks.~~

~~d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.~~

~~e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.~~

~~f. An emergency medical technician-intermediate/99 student may practice all of the skills defined in the core scope of practice for emergency medical technician-intermediate/99 while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an emergency medical technician-intermediate/99 student.~~

~~g. Testing. Students must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.~~

~~h. Emergency medical technician-intermediate/99 initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.~~

- ~~i. Relicensure of emergency medical technician-intermediate/99. An emergency medical technician-intermediate/99 must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.~~

6.4. Paramedic:

- a. Student prerequisite ~~certification~~. Students must be certified ~~or licensed~~ at minimum as an emergency medical technician or licensed at minimum as an emergency medical technician or its equivalent ~~prior to testing~~.
- b. Curriculum Course. The course ~~curriculum~~ must be that issued adhere to the national emergency medical services education standards for paramedics as published by the United States department of transportation, national highway traffic safety administration; ~~in the edition specified by the department~~ and be conducted by a commission on accreditation of allied education programs accredited paramedic education program.
- c. ~~Textbooks. The department shall approve textbooks.~~

- ~~d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as a paramedic or its equivalent. Course coordinators that are not affiliated with a licensed training institution must have their paramedic course accredited by an accrediting agency by January 1, 2012.~~

- ~~e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as a paramedic or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as a paramedic or its equivalent.~~

- ~~f. A paramedic student may practice all of the skills defined in the ~~core~~ scope of practice for paramedic while in the classroom and during a clinical or field internship while under direct supervision of an instructor or clinical and field internship preceptor and if registered with the department as a paramedic student.~~

- ~~g. Field internship. Courses must provide field internship experience based on the curriculum requirements for patient contacts with a paramedic preceptor.~~

- ~~h. Testing. A student must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.~~

- ~~i.~~ d. Paramedic initial licensure. A person An individual eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining is certified as a paramedic by the national registry ~~certification and in compliance with chapter 50-03-03 will be~~ is eligible for licensure. Upon completion and department approval of a licensed application, eligible applicants may be licensed by the department ~~expiring. The applicant must be affiliated with a North Dakota licensed emergency medical services operation or obtain medical~~

direction from a North Dakota licensed physician. Licensure will expire ninety days after ~~their~~the national registry paramedic expiration date.

~~j.e. Relicensure of paramedic. A paramedic must be recertified by~~An individual that maintains certification from the national registry ~~recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will~~as a paramedic is eligible for relicensure. Upon completion and approval of a license application, eligible applicants may be relicensed by the department ~~for a two-year period expiring. The applicant must be affiliated with a North Dakota licensed emergency medical services operation or obtain medical direction from a North Dakota licensed physician. Licensure will expire~~ ninety days after ~~their~~the national registry paramedic expiration date.

~~7. Advanced first aid ambulance attendant:~~

~~a. Advanced first aid ambulance attendant initial certification. The department shall issue initial certification to persons currently certified in American national red cross advanced first aid and who demonstrate a minimum of two years experience with a North Dakota licensed ambulance service as evidenced by North Dakota ambulance service license application personnel rosters.~~

~~b. Recertification of advanced first aid ambulance attendants. The department shall recertify for a three-year period, expiring on June thirtieth, those persons who meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and have completed a twenty-four-hour emergency medical technician basic refresher course, which includes a cardiopulmonary resuscitation refresher, answering correctly at least seventy percent of the questions on a written examination specified by the department and passing a local practical examination meeting the department's requirements.~~

~~8. Emergency vehicle operations:~~

~~a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~

~~b. Course coordinator. The course coordinator must be certified by the department as an emergency vehicle operation instructor.~~

~~c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.~~

~~d. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.~~

~~9. Emergency medical dispatch:~~

~~a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~

~~b. Course coordinator. The course coordinator must be approved by the department as an emergency medical dispatch instructor.~~

~~c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.~~

~~d. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.~~

~~10. Automobile extrication:~~

~~a. Curriculum. The course curriculum must be approved by the department.~~

~~b. Course coordinator. The course coordinator must be certified by the department as an automobile extrication instructor.~~

~~c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.~~

~~d. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.~~

5. Emergency medical services instructor:

a. Student prerequisite. A candidate for certification as an emergency medical services instructor must be at least eighteen years of age and licensed for at least two years as an emergency medical technician, advanced emergency medical technician, or paramedic.

b. Course. The course must be approved by the department.

c. Initial certification. The department shall issue initial certification to individuals who have successfully completed an approved course and meet the prerequisites. Individuals possessing a bachelor's degree in education, a teacher's certification in education, a master's degree or doctorate and meeting the student prerequisites are eligible for initial certification upon application to the department. Emergency medical services instructor certification is concurrent with emergency medical services licensure.

d. Recertification. The department may recertify as emergency medical services instructors those individuals who maintain emergency medical services licensure and:

(1) Are employed or affiliated with a licensed emergency medical services training institution and submit documentation of eight hours of adult instructional education approved by the licensed emergency medical services training institute; and

(2) Instruct or coordinate a minimum of one authorized emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic education program every two years.

6. Community emergency medical technician:

a. The department shall certify as a community emergency medical technician an individual who meets the following qualifications:

(1) Has a current license as an emergency medical technician issued by the department.

(2) Has two years of service as an emergency medical technician.

(3) Has successfully completed a community emergency medical technician education program from a college or university that has been approved by the department or accredited by a department approved accreditation organization. The education program must include clinical experience that is provided under the supervision of a physician, advanced practice registered nurse, physician assistant, or public health nurse operating under the direct authority of a local unit of government.

b. A community emergency medical technician shall practice in accordance with protocols and standards established by a medical director and provide services as directed by a patient care plan developed by a patient's primary or specialty care physician, advanced practice registered nurse, or physician assistant. In the absence of a primary or specialty care provider, the patient care plan may be directed by the medical director.

c. A community emergency medical technician must be employed by a licensed ground ambulance or licensed hospital.

d. In addition to the relicensure requirements in subdivision e of subsection 2, a community emergency medical technician shall complete an additional twelve hours of continuing education in clinical topics approved by the medical director.

e. No individual shall hold themselves out as a community emergency medical technician or provide the services of a community emergency medical technician unless such individual is certified by the department.

7. Community advanced emergency medical technician:

a. The department shall certify as a community advanced emergency medical technician an individual who meets the following qualifications:

(1) Has a current license as an advanced emergency medical technician issued by the department.

(2) Has two years of service as an advanced emergency medical technician.

(3) Has successfully completed a community advanced emergency medical technician education program from a college or university that has been approved by the department or accredited by a department approved accreditation organization. The education program must include clinical experience that is provided under the supervision of a physician, advanced practice registered nurse, physician assistant, or public health nurse operating under the direct authority of a local unit of government.

b. A community advanced emergency medical technician shall practice in accordance with protocols and standards established by a medical director and provide services as directed by a patient care plan developed by a patient's primary or specialty care physician, advanced practice registered nurse, or physician assistant. In the absence of a primary or specialty care provider, the patient care plan may be directed by the medical director.

c. A community advanced emergency medical technician must be employed by a licensed ground ambulance or licensed hospital.

d. In addition to the relicensure requirements in subdivision e of subsection 3, a community advanced emergency medical technician shall complete an additional twelve hours of continuing education in clinical topics approved by the medical director.

e. No individual shall hold themselves out as a community advanced emergency medical technician or provide the services of a community advanced emergency medical technician unless such individual is certified by the department.

8. Community paramedic:

a. The department shall certify as a community paramedic an individual who meets the following qualifications:

(1) Has a current license as a paramedic issued by the department.

(2) Has two years of service as a paramedic.

(3) Has successfully completed a community paramedic education program from a college or university that has been approved by the department or accredited by a department approved accreditation organization. The education program must include clinical experience that is provided under the supervision of a physician, advanced practice registered nurse, physician assistant, or public health nurse operating under the direct authority of a local unit of government.

b. A community paramedic shall practice in accordance with protocols and standards established by a medical director and provide services as directed by a patient care plan developed by a patient's primary or specialty care physician, advanced practice registered nurse, or physician assistant. In the absence of a primary or specialty care provider, the patient care plan may be directed by the medical director.

c. A community paramedic must be employed by a licensed ground ambulance or licensed hospital.

d. In addition to the relicensure requirements in subdivision e of subsection 4, a community paramedic shall complete an additional eighteen hours of continuing education in clinical topics approved by the medical director.

e. No individual shall hold themselves out as a community paramedic or provide the services of a community paramedic unless such individual is certified by the department.

9. Emergency medical dispatch. An individual authorized to provide prearrival emergency medical instructions for a public safety answering point shall satisfactorily complete an emergency medical dispatch course of instruction approved by the department. A certificate indicating satisfactory completion of the emergency medical dispatch course of instruction must be submitted to the department by the public safety answering point prior to the individual providing prearrival emergency medical instructions for a public safety answering point.

History: Effective April 1, 1992; amended effective August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-03.1. Limited temporary certification or licensure of emergency medical services training course graduates.

Repealed effective January 1, 2024.

~~1. An individual that has graduated from a department-authorized emergency medical services training course as an emergency medical technician, emergency medical technician--intermediate, or paramedic and has submitted a completed application signed by a physician~~

~~and an official transcript verifying program completion may be issued a limited certification or license one time. A limited temporary certification or licensure allows the graduate to be employed while awaiting results of the graduate's national registry examination. The limited temporary certification or licensure expires ninety days after the date of issue.~~

- ~~2. The graduate must practice under the direct supervision of a person certified or licensed at an equal or greater level. Direct supervision means close physical and visual proximity. The graduate may not be the primary care provider.~~

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-03.2. Continuing education.

~~Continuing education means ongoing professional education that is based on current emergency medical services textbooks, emergency medical services educational principles, or topics that expand the professional knowledge to stay up to date with emergency medical services standards. An entity or individual that offers continuing education must:~~

- ~~1. Have the course approved as continuing education by:~~

- ~~a. The department;~~

- ~~b. An emergency medical services training institution licensed in accordance with chapter 33-36-02;~~

- ~~c. The continuing education coordinating board for emergency medical services located in Dallas, Texas;~~

- ~~d. A licensed continuing education coordinator in consultation with a licensed physician;~~

- ~~e. A licensed instructor in consultation with a licensed physician; or~~

- ~~f. A licensed physician.~~

- ~~2. Maintain the continuing education course records for at least two years.~~

- ~~3. Issue certificates to attendees that list the title of the course, date, number of hours awarded rounded to the nearest half hour, location, name of instructor, and the name of the person or entity that approved the courses~~ shall follow the continuing education policy as published in the department's emergency medical services instructor handbook.

History: Effective July 1, 2010; amended effective January 1, 2024.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-04. Training, testing, and certification standards for certification scope enhancement courses.

Repealed effective January 1, 2024.

~~The department shall authorize the conduct of courses, the testing of students, and the certification or licensure of personnel when application has been made on forms provided prior to conducting the course and in the manner specified by the department contingent on the following requirements:~~

- ~~1. Intravenous therapy maintenance:~~

- ~~a. Student prerequisite certification. A student must be licensed as an emergency medical technician or its equivalent.~~
 - ~~b. Curriculum. The course curriculum must be that issued by the department entitled "EMT-IV Maintenance Module".~~
 - ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator, and currently certified in intravenous therapy maintenance, or its equivalent.~~
 - ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of performing intravenous maintenance skills on a mannequin.~~
 - ~~e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~
- ~~2. Automobile extrication instructor:~~
- ~~a. Curriculum. The course curriculum must be approved by the department.~~
 - ~~b. Student prerequisite. The candidate for this course must be currently certified in automobile extrication with at least two years of certified automobile extrication experience.~~
 - ~~c. Course coordinator. The department shall designate the course coordinator.~~
 - ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.~~
 - ~~e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~
 - ~~f. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an automobile extrication course or have audited eight hours of an automobile extrication instructor course before the expiration date of their certification.~~
- ~~3. Emergency medical services instructor:~~
- ~~a. Student prerequisite. An individual must be at least eighteen years of age and certified or licensed for at least two years as a patient care provider at the level the individual will instruct at, in order to be licensed.~~
 - ~~b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department or its equivalent.~~
 - ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor.~~

~~d. Initial licensure. The department shall issue initial licensure to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons completing the course between July first and December thirty-first shall be licensed until June thirtieth of the third year.~~

~~e. Relicensure. The department shall relicense for a two-year period those persons who have participated in at least one initial training course as a course coordinator or primary instructor, and:~~

~~(1) Completed the department's eight-hour relicensure course;~~

~~(2) Those persons that are employed or affiliated with a licensed training institution, may submit documentation of eight hours of adult education training to satisfy the relicensure requirements;~~

~~(3) Within the current two-year licensure period the instructor has had at least a seventy percent pass rate in both cognitive and practical examinations for the following primary certification courses; emergency medical technician, emergency medical technician-intermediate/85, emergency medical technician-intermediate/99, or paramedic; and~~

~~(4) In addition, failure to achieve a seventy percent pass rate for these courses would require the instructor to retake the entire initial licensure process for emergency medical services instructor or require the instructor to be affiliated with a licensed training institution for a period of two years.~~

~~4. Continuing education coordinator:~~

~~a. Student prerequisite. An individual must be at least eighteen years of age and certified or licensed for at least two years as a patient care provider at the level at which the individual will instruct.~~

~~b. Curriculum. The course curriculum must be that issued by the division of emergency medical services and trauma.~~

~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor.~~

~~d. Initial licensure. The department shall issue initial licensure to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons completing the course between July first and December thirty-first shall be licensed until June thirtieth of the third year.~~

~~e. Relicensure. The department shall relicense for a two-year period those persons:~~

~~(1) Who have completed the department's relicensure course; or~~

~~(2) Who are employed or affiliated with a licensed training institution, upon submission of documentation of continued affiliation with a licensed training institution.~~

~~5. Epinephrine administration:~~

~~a. Student prerequisite certification. A student must be certified as an emergency medical responder or its equivalent.~~

- ~~b. Curriculum. The course curriculum must be that issued by the department entitled "Epinephrine Administration Module".~~
- ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently certified in epinephrine administration or its equivalent.~~
- ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of performing subcutaneous injection of epinephrine with the use of a preloaded, self-injecting device such as the epipen trainer.~~
- ~~e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~
- ~~6. Dextrose administration:~~
 - ~~a. Student prerequisite licensure. A student must be licensed as an emergency medical technician-intermediate or its equivalent.~~
 - ~~b. Curriculum. The course curriculum must be that issued by the department entitled "EMT-I -- 50% Dextrose Administration Module".~~
 - ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be licensed as a paramedic or its equivalent.~~
 - ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of administration of the drug by aseptic injection into intravenous administration tubing.~~
 - ~~e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~
- ~~7. Bronchodilator/nebulizer administration:~~
 - ~~a. Student prerequisite licensure. A student must be licensed as an emergency medical technician or its equivalent.~~
 - ~~b. Curriculum. The course curriculum must be the general pharmacology and the respiratory emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department, or its equivalent.~~
 - ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and be licensed as a paramedic or its equivalent.~~

- ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.~~
- ~~e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~
- ~~8. Limited advanced airway insertion:
 - ~~a. Student prerequisite licensure. A student must be licensed as an emergency medical technician or its equivalent.~~
 - ~~b. Curriculum. The course curriculum must be that issued by the department entitled "Limited Advanced Airway Module".~~
 - ~~c. Course coordinator. The course coordinator must be licensed as an emergency medical services instructor or continuing education coordinator and must be currently licensed as a paramedic or its equivalent.~~
 - ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.~~
 - ~~e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~~~
- ~~9. Emergency vehicle operations instructor:
 - ~~a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~
 - ~~b. Course instructor. The department shall designate the course instructor.~~
 - ~~c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.~~
 - ~~d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~
 - ~~e. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an emergency vehicle operations course or have audited eight hours of an emergency vehicle operator's course.~~~~

~~**History:** Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006; January 1, 2008; July 1, 2010.~~

~~**General Authority:** NDCC 23-27-04.3~~

~~**Law Implemented:** NDCC 23-27-04.3~~

33-36-01-04.1. Training, testing, and certification standards for certification refresher courses.

Repealed effective January 1, 2024.

~~— The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms requested from and provided by the department prior to conducting the course and in the manner specified by the department contingent on the following requirements:~~

~~— 1. — Emergency medical responder refresher:~~

~~— a. — Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~

~~— b. — Textbooks. The department shall approve textbooks.~~

~~— c. — Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently certified as an emergency medical responder or its equivalent.~~

~~— d. — Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.~~

~~— 2. — Emergency medical technician refresher:~~

~~— a. — Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.~~

~~— b. — Textbooks. The department shall approve textbooks.~~

~~— c. — Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as an emergency medical technician or its equivalent.~~

~~— d. — Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all stations of a practical examination conducted by the course coordinator.~~

~~— 3. — Emergency medical technician-intermediate/85 refresher:~~

~~— a. — Curriculum. The course coordinator shall select topics consistent with the reregistration requirements of the national registry.~~

~~— b. — Textbooks. The department shall approve textbooks.~~

~~— c. — Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.~~

~~— 4. — Emergency medical technician-intermediate/99 refresher:~~

- ~~a. Curriculum. The course coordinator shall select topics consistent with the reregistration requirements of the national registry.~~
- ~~b. Textbooks. The department shall approve textbooks.~~
- ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.~~
- ~~5. Paramedic refresher:~~
 - ~~a. Curriculum. The course curriculum must be consistent with the reregistration requirements of the national registry.~~
 - ~~b. Textbooks. The department shall approve textbooks.~~
 - ~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as a paramedic or its equivalent.~~

~~**History:** Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008; July 1, 2010.~~

~~**General Authority:** NDCC 23-27-04.3~~

~~**Law Implemented:** NDCC 23-27-04.3~~

33-36-01-05. Denial, suspension, or revocation of certification or licensure.

The department may deny, suspend, or revoke the certification or licensure ~~for a period of time determined by the department~~ of a ~~person~~an individual who:

1. Has misrepresented to others that the ~~person~~individual is a physician, nurse, or health care provider other than the highest level for which they are certified or licensed.
2. Is incapable of properly performing the skills for which the individual has been certified or licensed.
3. Performs a skill which exceeds those allowed by the individual's level of certification or licensure.
4. Is under indictment for or has been convicted of a misdemeanor or felony which has a direct bearing upon the ~~person's~~individual's ability to serve the public in a capacity certified or licensed by this chapter, or has been convicted of a crime that requires the ~~person~~individual to register as a sex offender in any state. ~~Persons~~Individuals certified or licensed who are under indictment for or have been convicted of a misdemeanor or felony or required to register as a sex offender in any state must report the information to the department within two business days.
5. Has been found by a court of law to be mentally incompetent.
6. Failure to follow examination policies as a student, instructor, or course coordinator.
7. Diversion of drugs for personal or unauthorized use.
8. Performance of care in a manner inconsistent with acceptable standards or protocols.
9. Has attempted to obtain by fraud or deceit a certification or license or has submitted to the department any information that is fraudulent, deceitful, or false.

10. Has had the ~~person's~~individual's national registry or other health care certification or license encumbered for any reason. ~~Persons~~Individuals certified or licensed as described in this chapter must report any encumbrance of their national registry or other health care certification or licensure to the department within two business days.
11. Has misrepresented to others that the ~~person~~individual is an employee, volunteer, or agent of an ambulance service, quick response unit, or rescue squad to offer emergency medical services.
12. Unprofessional conduct, which may give a negative impression of the emergency medical services system to the public, ~~as determined by the department~~.
13. As an instructor has failed to have emergency medical services training authorized as required ~~in section 33-36-01-03, 33-36-01-04, or 33-36-01-04.1~~ or has not met required education standards.
14. Providing emergency medical or community emergency medical technician, community advanced emergency medical technician, or community paramedic services without authorization from a physician.
15. Has been found to be under the influence of alcohol or mind-altering drugs while on call, on duty, or during an emergency medical or community emergency medical technician, community advanced emergency medical technician, or community paramedic response or interfacility transfer.
16. Failing to respond to an emergency while on call or on duty. The failure to respond must be caused by the individual's willful disregard and not caused by a good-faith error or circumstances beyond the individual's control as determined by the department.

History: Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-05.1. Criminal history background checks.

The department may perform criminal history background checks on any applicant requesting a certification or license or ~~a person~~an individual requesting to be listed on an ambulance service or quick response unit's roster as a driver. A driver may be denied participation in any emergency medical services operation based on the driver's criminal background history or any occurrence listed in section 33-36-01-05.

History: Effective January 1, 2008; amended effective January 1, 2024.

General Authority: NDCC ~~12-60-24.2~~12-60-24, 23-27-04.3

Law Implemented: NDCC ~~12-60-24.2~~12-60-24, 23-27-04.3

33-36-01-08. Waivers.

Based on each individual case, the department may waive any provisions of this chapter that may result in unreasonable hardship upon the individual or the individual's emergency medical service agency operation, provided such a waiver does not adversely affect the health and safety of patients. The department ~~will~~may consider waivers for the following situations and conditions:

1. ~~A person~~An individual had completed all the requirements for recertification or relicensure and a good-faith effort was made by that ~~person~~individual to recertify with the national registry and by no fault of the ~~person~~individual recertification was not granted.

2. ~~A person~~An individual who was current in the ~~person's~~individual's certification or license was called to active duty in the United States armed forces and deployed to an area without the resources to maintain the ~~person's~~individual's certification or license resulting in a lapse of the ~~person's~~individual's certification or license.
3. Other reason as determined by the department.
4. A waiver may be granted for a specific period of time not to exceed one year and shall expire on June thirtieth of each year.

History: Effective January 1, 2006; amended effective July 1, 2010; January 1, 2024.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

TITLE 42
INDIAN SCHOLARSHIPS, BOARD FOR

APRIL 2024

ARTICLE 42-02
NORTH DAKOTA ~~INDIAN~~NATIVE AMERICAN SCHOLARSHIP RULES

Chapter	
42-02-01	General Scholarship Policy
42-02-02	General Provisions
42-02-03	Scholarship Awards
42-02-04	Policy Requirements
42-02-05	Appeals Process

CHAPTER 42-02-01
GENERAL SCHOLARSHIP POLICY

Section	
42-02-01-01	Indian <u>Native American</u> Scholarship Basic Policy <u>Purpose and Duties</u>

42-02-01-01. ~~Indian~~Native American scholarship ~~basic policy~~purpose and duties.

The North Dakota ~~Indian~~Native American scholarship board was established to provide ~~scholarship awards~~scholarships to ~~Indian~~North Dakota resident students who are members of a federally recognized Indian tribe. Students may qualify through an application procedure established by the board. The board ~~provides awards to state resident Indian students admitted to any institution of higher learning or state career and technical education program within this state. A student may qualify for an award by graduating as a North Dakota high school valedictorian, by demonstrating academic merit, or by demonstrating financial need~~annually issues awards, directs the North Dakota university system in the administration of the awards, establishes appropriate rules and procedures, and encourages members of federally recognized Indian tribes to pursue higher education in the state.

History: Effective February 1, 2000; amended effective January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

CHAPTER 42-02-02

42-02-02-01. Eligibility of applicants.

In accordance with North Dakota Century Code chapter 15-63, the following factors ~~shall~~must be considered in the process used to determine eligibility of applicants:

1. An applicant must be an enrolled member of a federally recognized Indian tribe ~~and a~~.
2. An applicant must be a resident of North Dakota. Residency for each student ~~shall be~~is determined by the institution that student is attending.
- ~~2.3.~~ 3. An applicant ~~may not be considered eligible until the applicant has gained admission to any institution of higher learning or state career and technical education program of study within North Dakota and has had this fact certified to the board~~must be pursuing a degree or certificate at a North Dakota accredited institution of higher learning or accredited state career and technical education program with a physical presence in the state.
- ~~3.4.~~ An applicant ~~must graduate as a North Dakota high school valedictorian,~~shall demonstrate academic merit; ~~or demonstrate financial need to be considered for an award.~~
- ~~4.5.~~ An applicant ~~must~~shall demonstrate probable and continuing success as a student by ~~earning~~:
 - ~~a.~~ Earning a minimum cumulative grade point average (GPA), or its equivalent, of 3.50 for a merit-based scholarship ~~or~~;
 - ~~b.~~ Earning a minimum 2.00 GPA, or its equivalent, for a need-based scholarship. ~~Applicants who apply with; or~~
 - ~~c.~~ Earning a general educational development high school diploma, which shall be considered to have met the minimum 2.00 GPA requirement ~~of a 2.00 cumulative grade point average.~~
- ~~5.~~ ~~The scholarship funds are available to students enrolled full-time or to part-time students who will complete their degree requirements within one term. Prorated awards are available to post-baccalaureate students enrolled less than full time. The board considers full-time enrollment to be twelve semester hours for undergraduate students and nine semester hours for graduate students, or an equivalent number of quarter hours or clock hours.~~
6. Students participating in internships, student teaching, teaching assistance programs, or cooperative education programs ~~shall be~~are eligible for a scholarship award ~~only~~ if participation in that program ~~will earn~~earns credits ~~which~~that require tuition and ~~which~~ are required for a degree.
- ~~7.~~ ~~Students may not receive more than the equivalent of full funding for six academic years under the scholarship.~~

History: Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02, 15-63-04

42-02-02-02. Procedures for application.

1. ~~All applications shall be submitted to the administrator of the Indian scholarship board:~~

~~North Dakota Indian Scholarship Board
North Dakota University System
600 East Boulevard Avenue, Dept. 215~~

- ~~2.~~ The priority deadline for application is the fifteenth of July of each year.
- ~~3.~~ Along with a completed application form, candidates Applicants shall ~~also~~ submit:
 - a. A completed application form;
 - ~~b.~~ Verification of tribal enrollment;
 - ~~b.c.~~ The applicant's most recent transcript that shows a cumulative ~~grade point average~~ GPA, or its equivalent; ~~and~~
 - ~~e.d.~~ A needs analysis form completed by a financial aid officer at the institution the applicant will be attending; and
 - ~~d.e.~~ The free application for federal student aid (FAFSA), for consideration ~~for~~ of need-based awards.
- ~~4.2.~~ Current award recipients may apply for ~~continued funding through the following academic year~~ the scholarship in subsequent years by submitting ~~an~~ a new application and the items listed in subdivisions ~~b~~ c through ~~d~~ e of subsection ~~3~~ 1.
- ~~5.~~ ~~Applicants whose circumstances change during the academic year may be considered for an award or an adjustment to an award by appealing in writing to the board.~~

History: Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

42-02-02-03. Selection process.

~~All completed~~

- 1. Completed applications received by the application priority deadline ~~shall~~ must be given full and equal consideration when screening for eligibility for the scholarship.
- 2. Candidates for the scholarship ~~shall~~ must be assigned to one of ~~three~~ two award categories as ~~valedictorian, merit-based, or need-based applicants. Award priority shall be given to high school valedictorians, then to merit-based applicants, then to need-based applicants.~~
 - a. Merit-based applicants must have a cumulative GPA of at least 3.50, or its equivalent.
 - b. Need-based applicants must hold a 2.00 minimum GPA, or its equivalent, and must demonstrate financial need on the needs analysis form. The FAFSA is required.
- 3. Grade point averages ~~shall, or the equivalent,~~ must be ranked from highest to lowest for merit-based applicants.
- 4. Demonstrated financial need, defined as an applicant's cost of attendance, minus ~~nonloan~~ the student aid index from the FAFSA, minus financial aid resources ~~and the applicant's free application for federal student aid calculated expected family contribution, shall~~ must be ranked from highest need to lowest need for need-based applicants. ~~Within each award category, the board may give preference to applicants who are members of North Dakota-based Indian tribes. The board may establish additional priority criteria as required to make award selections. Any~~

5. In cases of financial exigency, the board may exercise professional judgment to establish additional ranking criteria when making awards.

6. Within each award category, the board may give preference to applicants who are members of North Dakota-based Indian tribes.

7. An eligible applicant ~~who is not offered an award but~~ whose application was received by the priority deadline ~~shall~~but was not offered an award due to limited funding ~~must~~ be ~~placed on a wait list for funds, which may~~considered for an award if funds become available throughout the academic year. ~~Students on the wait list shall be ranked according to the priority funding selection process.~~

8. Applications received after the priority deadline ~~shall~~must be considered ~~only~~if all eligible applicants meeting the deadline are awarded and ~~if~~ funds remain. Late applications ~~shall~~must be considered in ~~date~~the order received based on the priority funding selection process ~~previously noted. All awardees and their respective institutions shall be sent notification after the completion of the selection process~~detailed in this section.

~~1. **Awards for valedictorians.** All high school valedictorians meeting the application criteria shall receive an award for the academic year immediately following their graduation from high school.~~

~~2. **Awards for merit-based scholarship.** The recipient of the merit-based scholarship must have a cumulative grade point average of at least 3.50. Financial need is not a factor. The award is to provide an incentive to students with high academic achievements.~~

~~3. **Awards for financial need-based scholarship.** The recipient of the need-based scholarship must demonstrate financial need on the needs analysis form completed by a financial aid officer at the institution the applicant is attending, and must have a cumulative grade point average of at least 2.00 or possess an acceptable high school equivalency credential.~~

History: Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

CHAPTER 42-02-03 SCHOLARSHIP AWARDS

Section

42-02-03-01	Award Amounts
42-02-03-02	Policy for a Student Who Declines an Initial Offer of Scholarship Award [Repealed]
42-02-03-03	Disbursement Procedures <u>Enrollment Verification and Payment</u>

42-02-03-01. Award amounts.

1. Criteria ~~to be~~ used in determining award amounts are availability of funds, total number of eligible applicants, ~~prevailing tuition rates, grade point averages, and financial need~~ and career level of applicants.
2. Award amounts ~~shall~~ must be set by the board each academic year.
3. The award amount may be reduced to accord with an individual recipient's financial need.
4. Awards may not exceed total cost of attendance, as determined by the institution, when considering all financial aid sources, for need-based and merit-based recipients.
5. Awards may not exceed one thousand dollars per semester, or six hundred sixty-seven dollars per quarter or clock-hour term, up to a maximum of two thousand dollars per academic year per student.
6. The award year may include the fall term, spring term, winter term, and summer term as a trailer.

History: Effective February 1, 2000; amended effective January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

42-02-03-03. ~~Disbursement procedures~~ Enrollment verification and payment.

~~— Each academic term, award payments shall be sent to the student's institution for disbursement upon verification of enrollment and scholarship eligibility requirements. Students are expected to use scholarship disbursements to pay their normal education expenses. Recipients may apply the awards toward the cost of registration, health, activities, board, books, and other necessary items~~

1. Funds will be disbursed to the enrolling institution for eligible students upon verification of eligibility each academic term.
2. Payment may be made to students enrolled full time or to part-time enrolled students on a prorated basis.
3. Full-time enrollment is defined as twelve semester hours for undergraduate students and nine semester hours for graduate students or an equivalent number of quarter or clock hours. No awards will be provided for enrollment in fewer than three credits or the equivalent for quarter or clock hours.
4. Scholarship funds may be used for tuition, fees, housing and food, books, supplies, course materials and equipment, and other educational-related expenses. Scholarship funds must not exceed the total cost of attendance when all other aid sources are taken into consideration.
5. An enrolling institution shall disburse funds to the student's account in a timely manner. Excess funds must be issued to the student after the enrolling institution has deducted the amount due to the institution.

6. Credits used to determine a student's eligibility may include credits from another institution (host institution), provided a collaborative or consortium agreement, or similar agreement, is in place with the degree or certificate-granting institution (home institution). The agreement must provide for a full transfer of the credits back to the home institution upon completion of class at the host institution.

7. A student in a study abroad class must be enrolled in credits at the home institution or have an agreement in place for the credits to be counted toward eligibility at the home institution.

History: Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02, 15-63-05

CHAPTER 42-02-04 POLICY REQUIREMENTS

Section

42-02-04-01	Policy for Satisfactory Progress [Repealed]
42-02-04-02	Policy for Students Who Delay or Interrupt Their Academic Programs [Repealed]
42-02-04-03	Policy for Refunds and Repayments

42-02-04-01. Policy for satisfactory progress.

~~Repealed effective April 1, 2024.~~

~~—The North Dakota Indian scholarship board requires the student to maintain a minimum cumulative grade point average of 2.00 for renewal. A merit-based scholarship recipient who does not maintain a minimum cumulative grade point average of 3.50 may be considered for a need-based scholarship if the student maintains a minimum cumulative grade point average of 2.00.~~

~~**History:** Effective February 1, 2000; amended effective January 1, 2018.~~

~~**General Authority:** NDCC 15-63-02~~

~~**Law Implemented:** NDCC 15-63-02~~

42-02-04-03. Policy for refunds and repayments.

~~—A student who withdraws after having received a North Dakota Indian scholarship shall have any refunds or repayments due to the board determined by the stated refund or repayment policy of the campus the student is attending~~

- ~~1. A student who withdraws after receiving a payment for the student's scholarship shall refund or repay the scholarship according to the stated refund or repayment policy of the institution the student is attending.~~
- ~~2. If a student meets the eligibility criteria at the time of disbursement, an institution is not required to return awards for subsequent changes to the student's financial aid package in the current academic term. However, eligibility criteria for future terms must be reviewed to ensure the eligibility criteria are met.~~
- ~~3. If funds are disbursed to a student and it is later determined that erroneous data was reported, making the student ineligible, the funds must be returned to the program.~~

~~**History:** Effective February 1, 2000; amended effective January 1, 2018; [April 1, 2024](#).~~

~~**General Authority:** NDCC 15-63-02~~

~~**Law Implemented:** NDCC 15-63-02, 15-63-07~~

CHAPTER 42-02-05

42-02-05-01. Appeals process.

~~— Any student who has been denied funding or who has lost funding may appeal to the board. In this case the student must submit, in writing, a description and explanation of the circumstances involved and a summary of the student's concerns, along with any supporting documentation.~~

The appeal should be addressed to the board:

~~North Dakota Indian Scholarship Board
North Dakota University System
600 East Boulevard Avenue, Dept. 215
Bismarck, ND 58505-0230~~

~~— The board shall consider the appeal and, under extraordinary circumstances affecting a student's eligibility for funding, may grant an award on appeal for the remainder of the academic year. The board shall contact the student regarding its decision within two weeks after the board renders a decision~~

1. Appeals relating to the North Dakota Native American scholarship should be directed to:

Native American Scholarship Board
Attn: North Dakota University System
600 East Boulevard Avenue, Dept. 215
Bismarck, ND 58505

2. Filing an appeal is not a guarantee of eligibility.

3. Consideration of appeals may be based on the reason for the appeal, statute, administrative rules, or the availability of funds.

History: Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018; April 1, 2024.

General Authority: NDCC 15-63-02

Law Implemented: NDCC 15-63-02

TITLE 43
INDUSTRIAL COMMISSION

APRIL 2024

**ARTICLE 43-02
MINERAL EXPLORATION AND DEVELOPMENT**

Chapter	
43-02-01	Coal Exploration
43-02-02	Subsurface Mineral Exploration and Development
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43-02-04	Natural Gas Well Status Determinations [Repealed]
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43-02-10	Certification of Secondary and Tertiary Recovery Projects - Determination of Incremental Production
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43-02-12	Geophysical Exploration Requirements
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43-02-14	Geological Storage of Oil or Gas
<u>43-02-15</u>	<u>Certification of Restimulation Wells</u>

CHAPTER 43-02-03

43-02-03-01. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units in an allocated pool.

4. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
5. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
6. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.
7. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
8. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
10. "Commercial injection well" means one that only receives fluids produced from wells operated by a person other than the principal on the bond.
11. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
12. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
13. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
14. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
15. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
16. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
17. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
18. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or

form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of:

- a. Aiding in the lifting of fluids in the well; or
- b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

19. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.

20. "Flow line" means a pipe or conduit of pipes used for the transportation, gathering, or conduct of a mineral from a wellhead to a separator, treater, dehydrator, tank battery, or surface reservoir.

21. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

22. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.

23. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

24. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.

25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.

26. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.

27. "Inactive pipeline" means any underground gathering pipeline system or portion thereof that has not transported fluid for more than one year.

~~27.~~28. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.

~~28.~~29. "Injection pipeline" means a pipe or conduit of pipes used for the transportation of fluids, typically via an injection pump, from a storage tank or tank battery directly to an injection well.

~~29.~~30. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.

~~30.~~31. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.

~~31.~~32. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.

~~32.~~33. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.

- ~~33.34.~~ "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
- ~~34.35.~~ "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
- ~~35.36.~~ "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
- ~~36.37.~~ "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
- ~~37.38.~~ "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.
- ~~38.39.~~ "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
- ~~39.40.~~ "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
- ~~40.41.~~ "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
- ~~41.42.~~ "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
- ~~42.43.~~ "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
- ~~43.44.~~ "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
- ~~44.45.~~ "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
- ~~45.46.~~ "Recomplete" means the subsequent completion of a well in a different pool.
- ~~46.47.~~ "Reservoir" means pool or common source of supply.
- ~~47.48.~~ "Saltwater handling facility" means and includes any container and site used for the handling, storage, disposal of substances obtained, or used, in connection with oil and gas exploration, development, and production and can be a stand-alone site or an appurtenance to a well or treating plant.
- ~~48.49.~~ "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.
- ~~49.50.~~ "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.

~~50.51.~~ "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information ~~in connection with the oil and gas industry~~ with no intent to produce oil or gas from or inject into such well.

~~51.52.~~ "Subsurface observation well" means a well used to observe subsurface phenomena, including the presence of carbon dioxide, pressure fluctuations, fluid levels and flow, temperature, and in situ water chemistry.

53. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsalable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

~~52.54.~~ "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or recycling tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production. This is not to be construed as to include saltwater handling and disposal operations which typically recover skim oil and solids from their operations, treating mud or cuttings at a well site during drilling operations, treating flowback water during completion operations at a well site, or treating tank bottoms at the well site or facility where they originated.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; January 1, 2008; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14. Access to sites and records.

The commission, director, and their representatives shall have access to all records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, operation, or servicing oil and gas wells, pipelines, injection wells, stratigraphic test wells, subsurface observation wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, pipeline right-of-way, well, or drilling rig operated or controlled by them, complying with state safety rules, and to inspect the records and operation, and to have access at all times to any and all records. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subdivision f of subsection 1 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; April 1, 2014; October 1, 2016; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. **Application of section.** This section is applicable to all allocation and custody transfer metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.

2. **Definitions.** As used in this section:

- a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.
- b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.
- c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.
- d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.
- e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.
- f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.

3. **Inventory filing requirements.** The owner of meteringmeter proving equipment shall file with the commissiondirector an inventory of all ~~meters used for custody transfer and allocation of production from oil or gas wells, or both~~conventional pipe provers or master-meter provers used to test the accuracy of oil meters. Inventories must be updated on an annual basis, and filed with the commissiondirector on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:

~~a. Well name and legal description of location or meter location if different.~~

~~b. North Dakota industrial commission well file number.~~

~~c. Meter information:~~

(1) ~~Gas meters~~Prover:

(a) ~~Make and model~~Type.

(b) ~~Differential, static, and temperature range~~Serial number.

(c) ~~Orifice tube size (diameter)~~Prover volume.

(d) ~~Meter station number~~Most recent water draw certificate.

~~(e) Serial number.~~

(2) ~~Oil meters~~Master meter:

(a) Make and model.

(b) Size.

(c) ~~Meter station number.~~

~~(d) Serial number.~~

(d) Master meter factor.

(e) Most recent meter proving certificate.

(3) An inventory of all meters used for custody transfer and allocation of production from oil and gas wells, or both must be filed with the director upon request.

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

All allocation meters must be approved prior to installation and use. The application for approval must be on a [facility](#) sundry notice (~~form 4 or form provided by the commission~~) and shall include the make and model number of the meter, the meter or station number, the serial number, the well name, its location, and the date the meter will be placed in service.

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

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

Any meter tests performed by a person not registered with the [commissiondirector](#) will not be accepted as a valid test.

6. **Calibration requirements.** Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the [commissiondirector](#) at least ten days prior to the testing of any meter.
- a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, meter use must be discontinued until successfully reproven after being repaired or replaced.

- b. Oil custody transfer meter factors must be maintained within one-quarter of one percent of the previous meter factor. If the factor change between provings or tests is greater than one-quarter of one percent, meter use must be discontinued until successfully reprovven after being repaired or replaced.
- c. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the ~~commission~~director to ensure measurement accuracy.
- d. All gas meters must be tested with a minimum of a three-point test for static and differential pressure elements and a two-point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.
- e. Test reports must include the following:
 - (1) Company name of test contractor.
 - Pipeline company name.
 - Meter owner name.
 - Producer name.
 - ~~(2)~~(5) Well or ~~CTB~~central tank battery (CTB) name.
 - ~~(3)~~(6) Well file number or CTB number.
 - ~~(4)~~ ~~Pipeline company or company name of test contractor.~~
 - ~~(5)~~(7) Test personnel's name.
 - ~~(6)~~(8) Station or meter number.
- f. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:
 - (1) Oil meters used for custody transfer shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at each two thousand barrel interval or more frequently at the discretion of the operator.
 - (2) Quarterly for oil meters used for allocation of production in a diverse ownership central production facility. Semiannually for oil meters used for allocation of production in a common ownership central production facility.
 - (3) Semiannually for gas meters used for allocation of production in a diverse ownership central production facility. Annually for gas meters used for allocation of production in a common ownership central production facility.
 - (4) Semiannually for gas meters in gas gathering systems.
 - (5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, orifice plates shall be inspected semiannually, and meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.
 - (6) For meters measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis, orifice plates shall be inspected annually.

g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy for all equipment used to test gas meters must be made available upon request. The owner of a conventional pipe prover or master meter prover shall notify the director at least ten days prior to the testing of any prover. Certification of the equipment must be updated as follows:

(1) Annually for all equipment used to test the pressure and differential pressure elements.

(2) Annually for all equipment used to determine temperature.

(3) Biennially for all conventional pipe provers.

(4) Annually for all master meters.

(5) Five years for equipment used in orifice tube inspection.

h. All meter test reports, including failed meter test reports, must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas ~~and~~, all meters used in ~~crude oil~~ custody transfer, conventional pipe provers, and master meter provers.

~~h. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:~~

~~(1) Annually for all equipment used to test the pressure and differential pressure elements.~~

~~(2) Annually for all equipment used to determine temperature.~~

~~(3) Biennially for all conventional pipe provers.~~

~~(4) Annually for all master meters.~~

~~(5) Five years for equipment used in orifice tube inspection.~~

7. **Variations.** Variations from all or part of this section may be granted by the ~~commission~~director provided the variance does not affect measurement accuracy. All requests for variations must be on a facility sundry notice ~~(form 4)~~.

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

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002; April 1, 2018; April 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing construction of a site or appurtenance or road access thereto, any person who proposes to drill a well for oil, gas, injection, or source well for

use in enhanced recovery operations, shall submit to the ~~commission,~~director and obtain ~~its~~the approval of the director, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial injection operations must be bonded in the amount of one hundred thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed;
 - c. A well that is abandoned pursuant to subsection 1 of North Dakota Century Code section 38-08-04 or section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed; and
 - d. A well that is temporarily abandoned under section 43-02-03-55 for more than seven years.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status for no more than seven years shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the ~~commission~~director. The ~~commission~~director may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the ~~commission,~~director and obtain ~~its~~the approval of the director, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved

plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:
 - a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.
 - (1) The principal shall submit a schematic drawing identifying all lines owned by the principal which leave the constructed pad or facility and shall provide any details the director deems necessary.
 - (2) The principal shall submit to the **commission**director a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.
 - (3) On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.
 - b. When the **commission**director has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the **commission**director upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if any well on the bond is in violation of a statute, rule, or order. No abandoned well may be transferred from a bond unless the transferee has obtained a single well bond in an amount equal to the cost of plugging the well and reclaiming the well site.
 - c. The transferee (new operator) of any **oil, gas, or injection**-well shall be responsible for the plugging and site reclamation of any such well and appurtenance thereto where the reclamation and restoration of land and water resources impacted by oil and gas development is in an inadequate reclamation status. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the **commission**director an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. **Treating plant bond.** Prior to commencing site or road access construction, any person proposing to operate a treating plant must submit to the **commission**director and obtain ~~its~~the

approval of the director, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

7. **Saltwater handling facility bond.** Prior to commencing site or road access construction, any person proposing to operate a saltwater handling facility that is not already bonded as an appurtenance shall submit to the ~~commission~~director and obtain ~~its~~the approval of the director, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the saltwater handling facility must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-53.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond. Transfer of property does not release the bond. The director may refuse to transfer any saltwater handling facility from a bond if the saltwater handling facility is in violation of a statute, rule, or order.
8. **Crude oil and produced water underground gathering pipeline bond.** The bonding requirements for crude oil and produced water underground gathering pipelines are not to be construed to be required on flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.
 - a. Any owner of an underground gathering pipeline transferring crude oil or produced water, after April 19, 2015, shall submit to the ~~commission~~director and obtain ~~its~~the approval of the director, a surety bond or cash bond prior to July 1, 2017. Any owner of a proposed underground gathering pipeline to transfer crude oil or produced water shall submit to the ~~commission~~director and obtain ~~its~~the approval of the director, a surety bond or cash bond prior to placing into service. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the crude oil or produced water underground gathering pipeline must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The bond must be in the amount of fifty thousand dollars when applicable to one crude oil or produced water underground gathering pipeline system only. Such underground gathering pipelines that are less than one mile [1609.34 meters] in length may be bonded in a lesser amount if approved by the director. When the principal on the bond is operating multiple gathering pipeline systems within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided by law. A blanket bond covering one or more underground gathering pipeline systems must be in the amount of one hundred thousand dollars. The owner shall file with the director, as prescribed by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to

the termination point of all underground gathering pipelines on the bond. Each layer must include at least the following information:

- (1) The name of the pipeline gathering system and other separately named portions thereof;
 - (2) The type of fluid transported;
 - (3) The pipeline composition;
 - (4) Burial depth; and
 - (5) Approximate in-service date.
- b. The blanket bond covering more than one underground gathering pipeline system is limited to no more than six of the following instances of noncompliance in aggregate:
- (1) Any portion of an underground gathering pipeline system that has been removed from service for more than one year and is not properly abandoned pursuant to section 43-02-03-29.1; and
 - (2) An underground gathering pipeline right-of-way, including associated above ground equipment, which has not been properly reclaimed pursuant to section 43-02-03-29.1.

If this aggregate of underground gathering pipeline systems is reached, the **commissiondirector** may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission, after notice and hearing, may require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the underground gathering pipeline system and the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the **commissiondirector**. The **commissiondirector** may refuse to accept a bond or to add underground gathering pipeline systems to a blanket bond if the owner or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of underground gathering pipelines; if a civil or administrative action brought by the commission is pending against the owner or surety company; if an underground gathering pipeline system has exhibited multiple failures; or for other good cause.

- c. The underground gathering pipeline bond is to remain in force until the pipeline has been abandoned, as provided in section 43-02-03-29.1, and the right-of-way, including all associated above ground equipment, has been reclaimed as provided in section 43-02-03-29.1, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
- d. Transfer of underground gathering pipelines under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the underground gathering pipeline and the principal desires to be released from the bond covering the underground gathering pipeline, the principal must proceed as follows:
- (1) The principal shall notify the director, in writing, of all proposed transfers of underground gathering pipelines at least thirty days before the closing date of the transfer. The director, for good cause, may waive this requirement.

Notice of underground gathering pipeline transfer. The principal shall submit, as provided by the director, a geographical information system layer utilizing North

American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form 15pl signed by a party duly authorized to sign on behalf of the principal.

The notice of underground gathering pipeline transfer must recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such underground gathering pipelines under the transferee's pipeline bond or, as the case may be, does accept the responsibility of such underground gathering pipelines under the transferee's pipeline systems blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- (2) When the ~~commission~~director has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor must be released from the responsibility of abandoning the underground gathering pipelines and right-of-way reclamation. If such underground gathering pipelines include all underground gathering pipeline systems within the responsibility of the transferor's bond, such bond will be released by the ~~commission~~director upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any underground gathering pipeline from a bond if the underground gathering pipeline is in violation of a statute, rule, or order.
 - (3) The transferee (new owner) of any underground gathering pipeline is responsible for the abandonment and right-of-way reclamation of any such underground gathering pipeline. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such underground gathering pipeline. The original or prior bond may not be released as to the abandonment and right-of-way reclamation responsibility of any such transferor until the transferee submits to the ~~commission~~director an acceptable bond to cover such underground gathering pipeline. All liability on bonds continues until the abandonment and right-of-way reclamation of such underground gathering pipeline is completed and approved by the director.
9. **Geological storage facility bond requirements.** Before commencing injection operations, the operator of any storage facility shall submit to the ~~commission,~~director and obtain ~~its~~the approval of the director, a surety bond or cash bond in the amount specified by the commission in the order approving the storage facility. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the storage facility shall be the principal on the bond covering the storage facility. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota.
10. Enhanced oil recovery potential well bond. Before the director may approve a nonunit well for enhanced oil recovery potential status, the operator shall submit to the director and obtain the approval of the director for, a blanket surety bond or cash bond in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six wells that have been inactive for more than twelve years. Wells within an approved enhanced recovery unit approved for enhanced oil recovery potential status may remain on the unit bond at the

discretion of the director. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. Each such bond may be subject to an annual review to determine if the bond amount is sufficient and the commission may, after notice and hearing, require a higher bond amount. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the director. The director may refuse to accept a bond or to add wells to an enhanced oil recovery potential blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

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

~~44.~~12. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill and recomplete.

Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall obtain approval from the director. An application for permit to drill ~~(form 1 or form provided by the commission)~~ must be filed with the director, together with a permit fee of one hundred dollars. ~~Verbal approval may be given for site preparation by the director in extenuating circumstances.~~ Site construction, or appurtenance or road access thereto, may not commence until such application is approved and a permit to drill is issued by the director. Verbal approval may be given for site preparation by the director in extenuating circumstances to include contractual obligations, an expiring lease, or an expiring right-of-way. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the ~~commission~~director, otherwise the application is incomplete. An incomplete application received by the ~~commission~~director has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, and the proposed road access to the nearest existing public road. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

For wells permitted on new pads built after July 31, 2013, permit conditions imposed by the ~~commission~~director may include, upon request of the owner of a permanently occupied dwelling within one thousand feet of the proposed well, requiring the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the well head, if the location can be reasonably accommodated within the proposed pad location. If the facilities are proposed to be located farther from the dwelling than the well bore, the director can issue the permit without comment from the dwelling owner. The applicant shall give any such owners written notice of the proposed facilities personally or by certified mail, return receipt requested, and addressed to their last-known address listed with the county property tax department. The ~~commission~~director must receive written comments from such owner within five business days of the owner receiving said notice. An application for permit must include an affidavit from the applicant identifying each owner's name and address, and the date written notice was given to each owner. The owner's notice must include:

1. A copy of North Dakota Century Code section 38-08-05.
2. The name, telephone number, and if available the electronic mail address of the applicant's local representative.
3. A sketch of the area indicating the location of the owner's dwelling, the proposed well, and location of the proposed flare, tanks, and treaters.
4. A statement indicating that any such owner objecting to the location of the flare, tanks, or treaters, must notify the ~~commission~~director within five business days of receiving the notice.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit must be approved by the director. ~~Included in such~~Such application shall be ~~the notice of intention (form 4)~~filed to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced. The director may extend a permit to drill and a permit to recomplete or drill horizontally for up to one year upon request.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-16.3. Recovery of a risk penalty.

The following govern the recovery of the risk penalty pursuant to subsection 3 of North Dakota Century Code section 38-08-08 and subsection 3 of North Dakota Century Code section 38-08-09.4:

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well, including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
 - a. The invitation to participate in drilling must be in writing and contain the following:
 - (1) The approximate surface location of the proposed or existing well, proposed completion and total depth, objective zone, and completion location if other than a vertical well.
 - (2) An itemization of the estimated costs of drilling and completion.
 - (3) The approximate date upon which the well was or will be spudded or reentered.
 - (4) A written election to participate and a statement indicating the invitation or election must be accepted within thirty days of receiving it. Such election to participate must be received by the owner giving the invitation within thirty days of the participating party's receipt.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
 - (6) Drilling or spacing unit description.
 - ~~b.~~ ~~An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.~~
 - ~~c.~~ An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
 - ~~d.~~c. An election to participate is only binding upon an owner electing or declining to participate if the well is spudded or reentry operations are commenced on or before ninety days after the date the owner extending the invitation to participate sets as the date upon which aan election response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.

- a. The invitation to participate in the unit expense must be in writing and contain the following:
 - (1) A description of the proposed unit expense, including the location, objectives, and plan of operation.
 - (2) An itemization of the estimated costs.
 - (3) The approximate date upon which the proposal was or will be commenced.
 - (4) A written election to participate and a statement indicating the invitation or election must be accepted within thirty days of receiving it. Such election to participate must be received by the owner giving the invitation within thirty days of the participating party's receipt.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
 - ~~b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.~~
 - ~~c.~~ An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
 - ~~d.c.~~ An election to participate is only binding upon an owner electing or declining to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which an election response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
 - ~~e.d.~~ An invitation to participate in a unit expense covering monthly operating expenses shall be effective for all such monthly operating expenses for a period of five years if the unit expense identified in the invitation to participate is first commenced within ninety days after the date set in the invitation to participate as the date upon which an election response to the invitation to participate must be received. An election to participate in a unit expense covering monthly operating expenses is effective for five years after operations are first commenced. If an election to participate in a unit expense comprised of monthly operating expenses expires or lapses after five years, a risk penalty may only be assessed and collected if the owner seeking the penalty once again complies with this section.
3. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation to participate and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996; amended effective May 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

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

43-02-03-17. Sign on well and facility.

Every well and facility associated with the production, transportation, purchasing, storage, treating, or processing of oil, gas, and water except plugged wells shall be identified by a sign. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the facility name or well name and number (which shall be different or distinctive for each well or facility), the name of the operator, current emergency phone number, file or facility number (if applicable), and the location by quarter-quarter, section, township, and range.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.3. Earthen pits and receptacles.

Except as otherwise provided in this section and sections 43-02-03-19.4, 43-02-03-19.5, and 43-02-03-51.3, no saltwater, drilling mud, crude oil, waste oil, or other waste ~~shall~~may be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

A lined earthen pit or open receptacle may be temporarily used to retain oil, water, cement, solids, or fluids generated in well plugging operations. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2. Within thirty days after operations have ceased, the earthen pit shall be reclaimed and the open receptacle shall be removed. The director may grant an extension of the thirty-day time period to no more than one year for good reason.

The director may permit pits or receptacles used solely for the purpose of flaring casinghead gas. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of fluids. Permission for such pit or receptacle ~~shall~~must be conditioned on locating the pit not less than one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks and keeping it free of any saltwater, crude oil, waste oil, or other waste. Saltwater, drilling mud, crude oil, waste oil, or other waste ~~shall~~must be removed from the pit or receptacle within twenty-four hours after being discovered and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

The director may permit pits used solely for storage of freshwater used in completion and well servicing operations. ~~Permits~~Permit applications for freshwater pits ~~shall~~must be submitted on a sundry notice and must be valid for a period of one year but may be reauthorized upon application. Freshwater pits ~~shall~~must be lined and no pit constructed for this purpose ~~shall~~may be wholly or partially constructed in fill dirt unless approved by the director. The director may approve chemical treatment to municipal drinking water standards upon application.

The freshwater pit ~~shall~~must have signage on all sides accessible to vehicular traffic clearly identifying the usage as freshwater only.

The director may permit portable-collapsible receptacles used solely for storage of fluids used in completion and well servicing operations, although no flowback fluids may be allowed. ~~Permits~~Permit applications for such receptacles ~~are~~must be submitted on a sundry notice and must be valid for a period of one year but may be reauthorized upon application. Such receptacles must utilize a sealed inner bladder, erected to conform to American petroleum institute standards, and may not be wholly or partially constructed on fill dirt unless approved by the director. Such receptacles must have signage on all sides accessible to vehicular traffic clearly identifying the fluid contained within.

The director may permit portable-collapsible single sidewall, double liner open top receptacles used solely for storage of fluids used in completion and well servicing operations, although no flowback fluids may be allowed. Such receptacles must have signage on all sides accessible to vehicular traffic clearly identifying the fluid contained within. Permits for such receptacles must be submitted on a sundry notice and must be valid for a period of one year but may be reauthorized upon application. Permits for such receptacles must include at least the following information:

1. The name and address of the operator.
2. Legal location of the site where the open top receptacle will be located.
3. Structural engineering analysis of the open top receptacle including panels and connection system.
4. Schematic drawings depicting the following:
 - a. As-built or proposed cut and fill diagram showing how the open top receptacle will be located in a cut area of the site.
 - b. The site that includes its dimensions or proposed dimensions and the height, location, and calculated capacity of the perimeter berm and any other spill containment structures.
 - c. Fill pipe or filling mechanism designed to protect the liner system from the initial force of water entering the open top receptacle.
 - d. Isolation valves in the produced water and freshwater flow lines.
 - e. Location of the concrete jersey barriers around the open top receptacle to avert vehicular traffic and impede the flow of water in the event of a breach.
5. Descriptions of the following:
 - a. The double liner system including liner specifications.
 - b. Sand pad and geotextile liner used to protect the liner system.
 - c. Real-time leak detection and monitoring system, including between the liners and visual inspections.
 - d. Overfill and low-level detection systems.
 - e. Mechanical integrity testing plan using freshwater of the system.
 - f. Emergency plan for emptying the open top receptacle and addressing resources on standby in the event of a breach.
 - g. Estimated setup and deconstruction dates.

The director may docket the permit application for hearing to gather additional information necessary to evaluate the proposed open top receptacle and site.

Permits may contain such terms and conditions as the director deems necessary.

Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the director, or any applicable rule or statute.

Any permit issued under this section may be modified or suspended by the director for good cause.

Permits are transferable only with approval of the director.

History: Effective September 1, 2000; amended effective April 1, 2010; April 1, 2012; October 1, 2016; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-20. Sealing off strata.

During the drilling of any ~~oil or natural gas~~ well, all oil, gas, and water strata ~~above the producing horizon shall~~must be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All freshwaters and waters of present or probable value for domestic, commercial, or stock purposes ~~shall~~must be confined to their respective strata and ~~shall~~must be adequately protected by methods approved by the ~~commission~~director. Special precautions ~~shall~~must be taken in drilling and plugging wells to guard against any loss of artesian water from the strata in which it occurs and the contamination of artesian water by objectionable water, oil, or gas.

All water ~~shall~~must be shut off and excluded from the various oil-bearing and gas-bearing strata which are penetrated. Water shutoffs ~~shall~~ ordinarily must be made by cementing casing or landing casing with or without the use of mud-laden fluid.

History: Amended effective May 1, 1992; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-21. Casing, tubing, and cementing requirements.

All wells drilled ~~for oil, natural gas, or injection~~ shall be ~~completed~~constructed with strings of casing which ~~shall~~must be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the uppermost sand of the Dakota group.

Drilling of the surface hole ~~shall~~must be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. This includes water used during the cementing of surface casing for displacement. The surface casing ~~shall~~must consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing ~~shall~~must be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement ~~shall~~must be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. If the annulus space is not adequately filled with cement, the director ~~shall~~must be notified immediately. The operator shall diligently perform remedial work after obtaining approval from the director. All strings of surface casing ~~shall~~must stand cemented under pressure for at least twelve hours before drilling the plug. The term "under pressure" as used herein ~~shall~~must be complied with if one float valve is used or if pressure is otherwise held. Cementing ~~shall~~must be by the pump and plug method while the drilling rig is on the well or other methods approved by the director. ~~The director is authorized to require an~~ appropriate accurate gauge must be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids. Surface casing pressure must be monitored and maintained to keep the hydrostatic pressure at the surface casing shoe below the pressure the formation integrity test was performed at.

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

[2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement ~~shall~~must be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Production or intermediate casing strings ~~shall~~must consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours, although in any horizontal well performing a single stage cement job from a measured depth of greater than thirteen thousand feet [3962.4 meters], the filler cement utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within forty-eight hours and at least five hundred pounds per square inch [3450 kilopascals] within ninety-six hours. All compressive strengths on production or intermediate casing cement ~~shall~~must be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. At a formation temperature at or in excess of two hundred thirty degrees Fahrenheit [110 degrees Celsius], cement blends must include additives to address compressive strength regression.

Each surface casing string shall~~must~~ be tested by application of pump pressure of at least one thousand pounds per square inch [6900 kilopascals] and each other casing string shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals] immediately after cementing, while the cement is in a liquid state, or the casing string must be pressure tested after all cement has reached five hundred pounds per square inch [3450 kilopascals] compressive strength. If, at the end of thirty minutes, this pressure has dropped more than ten percent, the casing ~~shall~~must be repaired after receiving approval from the director. Thereafter, the casing ~~shall~~-again must be tested in the same manner. Further work ~~shall~~may not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All flowing wells must be equipped with tubing. A tubing packer must also be utilized unless a waiver from the director is obtained after demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2010; April 1, 2012; April 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-24. Pulling string of casing.

In pulling strings of casing from any ~~oil, gas, or injection~~ well, the space above the casing stub ~~shall~~must be kept and left full of fluid with adequate gel strength and specific gravity, cement, or combination thereof, to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing ~~shall~~may be removed without the prior approval of the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-27.1. Hydraulic fracture stimulation.

1. Prior to performing any hydraulic fracture stimulation, including refracs, through a frac string run inside the ~~intermediate~~-casing string:

- a. Remedial work must be performed on all casing strings deemed defective pursuant to section 43-02-03-22 prior to performance at the discretion of the director.
 - b. The frac string must be either stung into a liner with the hanger/packer located in cemented casing or run with a packer set at a minimum depth of one hundred feet [30.48 meters] below the top of cement or a minimum depth of one hundred feet [30.48 meters] below the top of the Inyan Kara formation, whichever is deeper.
 - b.c. The ~~intermediate~~-casing-frac string annulus must be pressurized and monitored during frac operations. ~~Prior to performing any refrac, a casing evaluation tool must be run to verify adequate wall thickness of the intermediate casing~~If there is a suspected frac string or casing failure, the operator of the well shall verbally notify the director as soon as practicable.
 - e.d. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should the relief valve open. The relief valve must be set to limit line pressure to no more than eighty-five percent of the internal yield pressure of the frac string.
 - d.e. An adequately sized, function tested pressure relief valve and an ~~adequate~~adequately sized diversion line must be utilized to divert flow from the ~~intermediate~~-casing to a pit or containment vessel in case of frac string failure. The relief valve must be set to limit annular pressure to no more than eighty-five percent of the lowest internal yield pressure of the ~~intermediate~~-casing string or no greater than the pressure test on the intermediate casing, less one hundred pounds per square inch gauge, whichever is less.
 - e.f. The surface casing must be fully open and connected to a diversion line rigged to a pit or containment vessel.
 - f.g. An adequately sized, function tested remote operated frac valve must be utilized at a location on the christmas tree that provides isolation of the well bore from the treating line and must be remotely operated from the edge of the location or other safe distance.
 - g.h. Notify the director within twenty-four hours after the commencement of hydraulic fracture stimulation operations, in an electronic format approved by the director, identifying the subject well and verifying a frac string was run in the well.
 - h.i. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.
2. Prior to performing any hydraulic fracture stimulation, including refracs, through ~~an~~a casing string:
- a. Remedial work must be performed on all casing strings deemed defective pursuant to section 43-02-03-22 prior to performance at the discretion of the director.
 - b. The maximum treating pressure ~~shall be no~~may not be greater than eighty-five percent of the American petroleum institute rating of the affected ~~intermediate~~-casing string.
 - b.c. Casing evaluation tools to verify adequate wall thickness of any affected ~~intermediate~~-casing string ~~shall~~must be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation and a visual inspection with photographs shall be made of the top joint of the ~~intermediate~~-casing and the wellhead flange. The visual inspection and photograph requirement may be waived by the director for good cause.

If the casing evaluation tool or visual inspection indicates wall thickness is below the American petroleum institute minimum or a lighter weight of ~~intermediate~~-casing than the well design called for, calculations must be made to determine the reduced pressure rating. If the reduced pressure rating is less than the anticipated treating pressure, a frac string ~~shall~~must be run inside the ~~intermediate~~-casing.

- ~~e.d.~~ Cement evaluation tools to verify adequate cementing of each ~~intermediate~~-casing string shall be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation.
 - (1) If the cement evaluation tool indicates defective casing or cementing, a frac string ~~shall~~must be run inside the ~~intermediate~~-casing.
 - (2) If the cement evaluation tool indicates the ~~intermediate~~-casing string cemented in the well fails to satisfy section 43-02-03-21, a frac string ~~shall~~must be run inside the ~~intermediate~~-casing.
 - ~~d.e.~~ Each affected ~~intermediate~~-casing string and the wellhead must be pressure tested for at least thirty minutes with less than five percent loss to a pressure equal to or in excess of the maximum frac design pressure.
 - ~~e.f.~~ If the pressure rating of the wellhead does not exceed the maximum frac design pressure, a wellhead and blowout preventer protection system must be utilized during the frac.
 - ~~f.g.~~ An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should be the relief valve open. The relief valve must be set to limit line pressure to no greater than the test pressure of the ~~intermediate~~-casing, less one hundred pounds per square inch [689.48 kilopascals].
 - ~~g.h.~~ The surface casing valve must be fully open and connected to a diversion line rigged to a pit or containment vessel.
 - ~~h.i.~~ An adequately sized, function tested remote operated frac valve must be utilized between the treating line and the wellhead.
 - ~~i.j.~~ If there is a suspected casing failure, the operator of the well shall verbally notify the director as soon as practicable.
 - ~~k.~~ Notify the director within twenty-four hours after the commencement of hydraulic fracture stimulation operations, in an electronic format approved by the director, identifying the subject well and verifying all logs and pressure tests have been performed as required.
 - ~~j.l.~~ Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.
3. If during the stimulation, the pressure in the ~~intermediate~~-casing-surface casing annulus exceeds three hundred fifty pounds per square inch [2413 kilopascals] gauge, the owner or operator shall verbally notify the director as soon as practicable but no later than twenty-four hours following the incident.

History: Effective April 1, 2012; amended effective April 1, 2014; April 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation.

During drilling operations all oil wells ~~shall~~**must** be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler, electric generator, flare, or treater ~~shall~~**may** be placed nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank that is not an oil processing vessel as defined in American Society of Mechanical Engineers (ASME) section VIII. Placement as close as one hundred twenty-five feet [38.10 meters] may be allowed if a spark or flame arrestor is utilized on the equipment. Placement of an oil processing vessel as defined in ASME section VIII as close as fifty feet [15.24 meters] may be allowed if approved by the director. The required distances above must be measured horizontally from closest vessel edge to closest edge of the boiler, generator, flare, or treater or closest vessel edge to flame arrestor or burner air inlet edge. Any rubbish or debris that might constitute a fire hazard ~~shall~~**must** be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste ~~shall~~**must** be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production or injection equipment to eliminate a fire hazard.

The director may require remote operated or automatic shutdown equipment to be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

Surface casing may not be plumbed into the production flow line to relieve pressure without approval from the director.

No well shall be drilled nor production or injection equipment installed nor saltwater handling facility or treating plant constructed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment. The operator conducting any well hydraulic fracture stimulation shall give prior written notice, up to thirty-one days and not less than twenty-one days, to any operator of a well completed in the same or adjacent pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within two thousand six hundred and forty feet [804.67 meters] of one another. Notice must include twenty-four-hour emergency contact information, planned start and end dates, and contact information for scheduling updates.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006; January 1, 2008; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29. Well and lease equipment and gas gathering pipelines.

Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

All newly constructed underground gas gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the

pipe, and tracer wire shall be buried with any nonconductive pipes installed. When a trench for an underground gas gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.

1. The operator of any underground gas gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. The operator of any underground gas gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of all compressor sites, buried drip tanks, and the pipeline centerline. An affidavit of completion shall accompany each layer containing the following information:
 - a. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.
 - b. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
 - c. The anticipated operating pressure of the pipeline.
 - d. The type of fluid that will be transported in the pipeline and direction of flow.
 - e. Pressure to which the pipeline was tested prior to placing into service.
 - f. The minimum pipeline depth of burial.
 - g. In-service date.
 - h. Leak detection and monitoring methods that will be utilized after in-service date.
 - i. Pipeline name.
 - j. Accuracy of the geographical information system layer.
2. When an underground gas gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:
 - a. Disconnect and physically isolate the pipeline from any operating facility or other pipeline.
 - b. Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - c. Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - d. Remove cathodic protection from the pipeline.
 - e. Permanently plug or cap all open ends by mechanical means or welded means.
3. Within one hundred eighty days of completing the abandonment of an underground gas gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system

(GCS) and in an environmental systems research institute (**ErsiEsri**) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:

- a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.
- b. The type of fluid used to purge the pipeline.

4. Aboveground pipeline markers must be placed and maintained over each buried underground gas gathering pipeline or portion thereof at the discretion of the director when necessary to protect public health and safety. The markers must contain at least the following on a background of sharply contrasting color: the word "Warning", "Caution", or "Danger" followed by the fluid transported pipeline, the name of the operator, and current emergency phone number.

The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

History: Amended effective January 1, 1983; January 1, 2006; April 1, 2014; October 1, 2016; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29.1. Crude oil and produced water underground gathering pipelines.

1. Application of section. This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil or produced water from an oil and gas production facility for the purpose of disposal, storage, or for sale purposes. If these rules differ from the pipeline manufacturer's prescribed installation and operation practices, the pipeline manufacturer's prescribed installation and operation practices take precedence.

The requirements in this section are not applicable to flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment located entirely within the boundary of a well site or production facility.

If these rules differ from or are preempted by federal requirements on federally regulated pipelines, the federal rules take precedence. The pipeline owner shall provide sufficient documentation to the director confirming the pipeline is federally regulated.

2. Definitions. The terms used throughout this section apply to this section only.
 - a. "Crude oil or produced water underground gathering pipeline" means an underground gathering pipeline designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes.
 - b. "New construction" means a new gathering pipeline installation project or an alteration or reroute of an existing gathering pipeline where the location, composition, size, design temperature, or design pressure changes.
 - c. "Pipeline repair" is the work necessary to restore a pipeline system to a condition suitable for safe operations that does not change the design temperature or pressure.
 - d. "Gathering system" is a group of connected pipelines which have been designated as a gathering system by the operator. A gathering system must have a unique name and must be interconnected.

- e. "In-service date" is the first date fluid was transported down the underground gathering pipeline for disposal, storage, or sale purposes after construction.

3. Notifications.

- a. The underground gathering pipeline owner shall notify the ~~commission, as provided by the~~ director, at least seven days prior to commencing new construction of any underground gathering pipeline. The notice of intent to construct automatically expires after one year and for any project not built within one year; a new notice of intent to construct must be submitted.
 - (1) The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:
 - (a) The proposed date construction is scheduled to begin.
 - (b) A statement that the director will be verbally notified approximately forty-eight hours prior to commencing the construction.
 - (c) A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the proposed route of the pipeline from the point of origin to the termination point.
 - (d) The proposed underground gathering pipeline design drawings, including all associated above ground equipment.
 - [1] The proposed pipeline composition, specifications (i.e. size, weight, grade, wall thickness, coating, and standard dimension ratio).
 - [2] The type of fluid to be transported.
 - [3] The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service.
 - [4] Proposed burial depth of the pipeline.
 - [5] The location and type of all road crossings (i.e. bored and cased or bored only).
 - [6] The location of all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies that the pipeline may traverse, if applicable.
- b. The underground gathering pipeline owner shall file a sundry notice (form 4 or form provided by the ~~commission~~ director) with the director ~~notifying the commission~~ providing notification of any underground gathering pipeline system or portion thereof that has been removed from service for more than one year.
- c. If damage occurs to any underground gathering pipeline, flow line, or other underground equipment used to transport crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas, during construction, operation, maintenance, repair, or abandonment of an underground gathering pipeline, the responsible party shall verbally notify the director immediately.
- d. The pipeline owner shall file a sundry notice (form 4 or form provided by the ~~commission~~ director) within thirty days of the in-service date reporting the date of first service.

4. Design and construction.

The following applies to newly constructed crude oil and produced water underground gathering pipelines, including tie-ins to existing systems:

- a. Underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids.
- b. Underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and integrity testing.
- c. Installation crews must be trained in all installation practices for which they are tasked to perform.
- d. Underground gathering pipelines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe. Tracer wire must be buried with any nonconductive pipe installed.
- e. Unless the manufacturer's installation procedures and practices provide guidance, pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks greater than two inches in diameter, debris, trash, and other foreign material not required for pipeline installation. If a trench bottom is over excavated, the trench bottom must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

The width of the trench must provide adequate clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench must be stockpiled separately from previously stripped topsoil.

- f. Underground gathering pipelines that cross a township, county, or state graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.
- g. No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.
- h. The pipe must be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.
- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material that will be within two feet of the pipe must be free of rocks greater than two inches in diameter and foreign debris. Backfilling material must be compacted as appropriate during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.

- j. Cover depths must be a minimum of four feet [1.22 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83 meters] from the top of the pipe to the finished grade.
 - k. Underground gathering pipelines that traverse environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies, must be installed in a manner that minimizes impacts to these areas. Any horizontal directional drilling plan prepared by the owner or required by the director, must be filed with the [commission director](#), prior to the commencement of horizontal directional drilling.
 - l. Clamping or squeezing as a method of connecting any produced water underground gathering pipeline must be approved by the director. Prior to clamping or squeezing the pipeline, the owner shall file a sundry notice (form 4 or form provided by the [commission director](#)) with the director and obtain approval of the clamping or squeezing plan. The notice must include documentation that the pipeline can be safely clamped or squeezed as prescribed by the manufacturer's specifications. Any damaged portion of a produced water underground gathering pipeline that has been clamped or squeezed must be replaced before it is placed into service.
5. Pipeline reclamation.
- a. When utilizing excavation for pipeline installation, repair, or abandonment, topsoil must be stripped, segregated from the subsoils, and stockpiled for use in reclamation. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater.
 - b. The pipeline right-of-way must be reclaimed as closely as practicable to original condition. All stakes, temporary construction markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of.
 - c. During right-of-way reclamation all subsoils and topsoils must be returned in proper order to as close to the original depths as practicable. Right-of-way reclamation must be completed within one year of the pipeline being placed into service. An extension may be granted at the director's discretion.
 - d. The reclaimed right-of-way soils must be stabilized to prevent excessive settling, sluffing, cave-ins, or erosion.
 - e. The crude oil and produced water underground gathering pipeline owner is responsible for their right-of-way reclamation and maintenance until such pipeline is released by the [commission director](#) from the pipeline bond pursuant to section 43-02-03-15.

6. Inspection.

All newly constructed crude oil and produced water underground gathering pipelines must be inspected by third-party independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of this section. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, and specific training must be provided to the [commission director](#) upon request. A person may not be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected. The third-party independent inspector may not be an employee of the gathering pipeline owner/operator or the contractor hired to construct and install the pipeline.

The number of third-party independent inspectors must be adequate for the size of the pipeline construction project to ensure proper pipeline installation.

7. Associated pipeline facility.

No associated above ground equipment may be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The underground gathering pipeline owner shall take steps to minimize the amount of solids stored at the pipeline facility, although the remediation of such material may be allowed onsite, if approved by the director.

8. Underground gathering pipeline as built.

The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director, as prescribed by the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point. An affidavit of completion shall accompany each layer containing the following information:

- a. A third-party inspector certificate that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
- b. The outside diameter, minimum wall thickness, composition, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
- c. The maximum allowable operating pressure of the pipeline.
- d. The specified minimum yield strength and internal yield pressure of the pipeline if applicable to the composition of pipe.
- e. The type of fluid that will be transported in the pipeline.
- f. Pressure and duration to which the pipeline was tested prior to placing into service.
- g. The minimum pipeline depth of burial from the top of the pipe to the finished grade.

- h. In-service date.
- i. Leak protection and monitoring methods that will be utilized after in-service date.
- j. Any leak detection methods that have been prepared by the owner.
- k. The name of the pipeline gathering system and any other separately named portions thereof.
- l. ~~Accuracy of the~~The geographical information system layer must be within twenty feet [6.10 meters] of horizontal accuracy.

9. Operating requirements.

The maximum operating pressure for all crude oil and produced water underground gathering pipelines may not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of the pipeline, whichever is less. The maximum operating pressure of any portion of an underground gathering system may not exceed the test pressure from the most recent integrity test demonstration following modification or repair for which it was tested.

The crude oil or produced water underground gathering pipeline must be equipped with adequate controls and protective equipment to prevent the pipeline from operating above the maximum operating pressure.

10. Leak protection, detection, and monitoring.

All crude oil and produced water underground gathering pipeline owners shall file with the ~~commission~~director any leak protection and monitoring plan prepared by the owner or required by the director, pursuant to North Dakota Century Code section 38-08-27.

If any leak detection plan has been prepared by the owner, it must be submitted to the director.

All crude oil or produced water underground gathering pipeline owners shall develop and maintain a data sharing plan and file a copy with the director. The plan must provide for real-time sharing of data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale. If a discrepancy in the shared data is observed, the party observing the data discrepancy shall notify all other parties and action must be taken to determine the cause. A record of all data discrepancies must be retained by the crude oil or produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the ~~commission~~director.

11. Spill response.

All crude oil and produced water underground gathering pipeline owners shall maintain a spill response plan during the service life of any crude oil or produced water underground gathering pipeline. The plan should detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan should be tailored to the specific risks in the localized area. Response capabilities should address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

12. Corrosion control.

- a. Underground gathering pipelines must be designed to withstand the effects of external corrosion and maintained in a manner that mitigates internal corrosion.
- b. All metallic underground gathering pipelines installed must have sufficient corrosion control.
- c. All coated pipe must be electronically inspected prior to placement using coating deficiency (i.e. holiday) detectors to check for any faults not observable by visual examination. The holiday detector must be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested. During installation all joints, fittings, and tie-ins must be coated with materials compatible with the coatings on the pipe. Coating materials must:
 - (1) Be designed to mitigate corrosion of the buried pipeline;
 - (2) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
 - (3) Be sufficiently ductile to resist cracking;
 - (4) Have enough strength to resist damage due to handling and soil stress;
 - (5) Support any supplemental cathodic protection; and
 - (6) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.
- d. Cathodic protection systems must meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.
- e. If internal corrosion is anticipated or detected, the underground gathering pipeline owner shall take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods. Corrosion inhibitors must be used in sufficient quantity to protect the entire part of the pipeline system that the inhibitors are designed to protect.

13. Pipeline integrity.

A crude oil or produced water underground gathering pipeline owner may not operate a pipeline unless it has been pressure tested and demonstrated integrity. In addition, an owner may not return to service a portion of pipeline which has been repaired, replaced, relocated, or otherwise changed until it has demonstrated integrity.

- a. The crude oil and produced water underground gathering pipeline owner shall notify the **commissiondirector** at least forty-eight hours prior to commencement of any pipeline integrity test to allow a representative of the **commissiondirector** to witness the testing process and results. The notice must include the pipeline integrity test procedure.
- b. The crude oil and produced water underground gathering pipeline owner shall submit within sixty days of the underground gathering pipeline being placed into service the integrity test results which must include the following:
 - (1) The name of the pipeline gathering system and any other separately named portions thereof;
 - (2) The date of the test;

- (3) The duration of the test;
- (4) The length of pipeline which was tested;
- (5) The maximum and minimum test pressure;
- (6) The starting and ending pressure;
- (7) A copy of the appropriately scaled chart recorder or digital log results;
- (8) A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the centerline of the portion of the pipeline that was tested;
- (9) A copy of the test procedure used; and
- (10) A third-party inspector certificate summarizing the pipeline has been pressure tested and whether it demonstrated integrity, including the identification of any leaks, ruptures, or other integrity issues encountered, and an explanation for any substantial pressure gain or losses during the integrity test, if applicable.

c. All crude oil and produced water underground gathering pipeline owners shall maintain a pipeline integrity demonstration plan during the service life of any crude oil or produced water underground gathering pipeline. The director, for good cause, may require a pipeline integrity demonstration on any crude oil or produced water underground gathering pipeline.

14. Pipeline repair.

Each owner, in repairing an underground gathering pipeline or pipeline system, shall ensure that the repairs are made in a manner that prevents damage to persons or property.

An owner may not use any pipe, valve, or fitting, for replacement or repair of an underground gathering pipeline, unless it is designed to meet the maximum operating pressure.

- a. At least forty-eight hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner shall notify the ~~commission, as provided by the~~ director, except in an emergency.
- b. Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the centerline of the repaired or replaced pipeline and an affidavit of completion containing the following information:
 - (1) A statement that the pipeline was repaired in compliance with section 43-02-03-29.1.
 - (2) The reason for the repair or replacement.
 - (3) The length of pipeline that was repaired or replaced.
 - (4) Pressure and duration to which the pipeline was tested prior to returning to service.
- c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline must be approved by the director. Prior to clamping or squeezing the

pipeline, the owner shall file a sundry notice (form 4) with the director and obtain approval of the clamping or squeezing plan. The notice must include documentation that the pipeline can be safely clamped or squeezed as prescribed by the manufacturer's specifications. If an emergency requires clamping or squeezing, the owner or the owner's agent shall obtain verbal approval from the director and the notice shall be filed within seven days of completing the repair. Any damaged portion of a produced water underground gathering pipeline that has been clamped or squeezed must be replaced before it is returned to service.

15. Pipeline abandonment.

- a. At least forty-eight hours prior to abandoning any underground gathering pipeline, the underground gathering pipeline owner shall notify the director verbally.
- b. When an underground gathering pipeline or any part of such pipeline is abandoned as defined under subsection 1 of North Dakota Century Code section 38-08-02 after March 31, 2014, the owner shall leave such pipeline in a safe condition by conducting the following:
 - (1) Disconnect and physically isolate the pipeline from any operating facility, associated above ground equipment, or other pipeline.
 - (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - (4) Remove cathodic protection from the pipeline.
 - (5) Permanently plug or cap all open ends by mechanical means or welded means.
 - (6) The site of all associated above ground equipment must be reclaimed pursuant to section 43-02-03-34.1.
 - (7) If the bury depth is not at least three feet below final grade, such portion of pipe must be removed.
- c. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:
 - (1) A statement that the pipeline was abandoned in compliance with section 43-02-03-29.1.
 - (2) The type of fluid used to purge the pipeline.
 - (3) The date of pipeline abandonment.
 - (4) The length of pipeline abandoned.

16. Pipeline markers.

- a. Aboveground pipeline markers must be placed and maintained over each buried crude oil or produced water underground gathering pipeline or portion thereof at the discretion

of the director when necessary to protect public health and safety. The markers must contain at least the following on a background of sharply contrasting color: the word "Warning", "Caution", or "Danger" followed by the name of the fluid transported pipeline, the name of the operator, and current emergency phone number.

History: Effective October 1, 2016; amended effective April 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports.

After the plugging of a well, a plugging record (form 7) ~~shall~~**must** be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6 or form provided by the ~~commission~~**director**) ~~shall~~**must** be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. Within six months of reaching total depth and prior to completing the well, the operator shall cause to be run a cement evaluation log from which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The initial cement evaluation log must be run without the addition of pressure at surface, except at depths where the cement evaluation tool may need appropriate pressure applied to function properly. The obligation to log may be waived or postponed by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run ~~shall~~**must** be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the director free of charge. Logs ~~shall~~**must** be submitted as one digital TIFF (tagged image file format) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file one copy of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on permits, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, central tank battery number, any production runs, or volumes injected into an injection well, ~~shall~~**must** be kept confidential from the ~~time~~**date** a request by the operator is received in writing until the six-month confidentiality period has ended. The six-month period ~~shall commence~~**commences** on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period ~~shall commence~~**commences** on the date the well is spudded. The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the director deems it necessary to protect the public's health, safety, and welfare.

All information furnished to the director on recompletions, restimulation wells, or reentries, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, any production runs, or volumes injected into an injection well, ~~shall~~**must** be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed, recompleted, or restimulated or the date ~~the well was approved for recompletion or reentry~~a request by the operator is received in writing, whichever is earlier. Any information furnished to the director prior to approval of the recompletion, restimulation, or reentry ~~shall~~**must** remain public.

Approval must be obtained on a well sundry notice (form 4) form from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

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

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

All forms, reports, logs, and other information required by this section shall must be submitted within thirty days after the completion of such work, although a completion report shall must be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; October 1, 2016; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34.1. Reclamation of surface.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, or a treating plant or saltwater handling facility is decommissioned, the site, access road, and other associated facilities constructed shall must be reclaimed as closely as practicable to original condition pursuant to North Dakota Century Code section 38-08-04.12. Prior to site reclamation, the operator or the operator's agent shall file a well sundry notice (form 4) form or facility sundry notice with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall must include:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
 - c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
 - d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All equipment, waste, and debris shall be removed from the site. All pipelines shall be purged and abandoned pursuant to section 43-02-03-29.1. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material ~~shall~~**must** be removed, stabilized soil shall be remediated, and the site, access road, and other associated facilities constructed for the well, treating plant, or saltwater handling facility shall be reshaped as near as practicable to original contour.
3. The stockpiled topsoil ~~shall~~**must** be ~~evenly~~-distributed **evenly** over the disturbed area and, where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
4. A site assessment may be required by the director, before and after reclamation of the site.
5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged or treating plant or saltwater handling facility is decommissioned. The ~~operator~~**director** shall record documentation of the waiver with the recorder of the county in which the site or road is located.

History: Effective April 1, 2012; amended effective April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2022; [April 1, 2024](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-35. Conversion of mineral wells to freshwater wells.

Any person desiring to convert a mineral well to a freshwater well, as provided by North Dakota Century Code section 61-01-27, shall file an application for approval with the commission. The application must include, but is not limited to, the following:

1. If the well is to be used for other than individual domestic and livestock use, a conditional water permit issued by the ~~state water commission~~[department of water resources](#).
2. An affidavit by the person desiring to obtain approval for the conversion stating that such person has the authority and assumes all liability for the use and plugging of the proposed freshwater well.
3. The procedure which will be followed in converting the mineral well to a freshwater well.
4. If the well is not currently plugged and abandoned, an affidavit must be executed by the operator of the well indicating that the parties responsible for plugging the mineral well have no objection to the conversion of the mineral well to a freshwater well.

If the commission, after notice and hearing, determines that a mineral well may safely be used as a freshwater well, the commission may approve the conversion.

History: Amended effective April 30, 1981; January 1, 1983; September 1, 1987; July 1, 2002; [April 1, 2024](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-41. Subsurface pressure tests.

The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered and shall report the results thereof to the director within thirty days after the completion of such discovery well. Drill stem test pressures are acceptable. After the discovery of a new pool, each operator shall make additional subsurface pressure tests as directed by the director or provided for in

field rules. All tests shall be made by a person qualified by both training and experience to make such tests and with an approved subsurface pressure instrument. All wells ~~shall~~must remain completely shut in for at least forty-eight hours prior to the test. The subsurface determination ~~shall~~must be obtained as close as possible to the ~~midpoint~~top of the formation containing the productive interval of the reservoir. The report of the reservoir pressure test shall be filed on form 9a.

The director may shut in any well for failure to make such test as herein above described until such time as a satisfactory test has been made or satisfactory explanation given.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-44. Metered casinghead gas.

All casinghead gas produced ~~shall~~must be reported monthly to the director in units of one thousand cubic feet [28.32 cubic meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Associated gas production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards. The operator of a well shall notify the director within thirty days on a well sundry form of the connection date to a gas gathering system, the metering equipment, transporter, and purchaser of the gas. Any gas produced and used on lease for fuel purposes or flared ~~must~~may be estimated or measured and must be reported on a gas production report (form 5b) in accordance with section 43-02-03-52.1. Meters used to determine the use on lease or flared gas volumes must be installed and calibrated in accordance with American petroleum institute or American gas association standards or to the meter manufacturer's recommendations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48.1. Central production facility - Commingling of production.

1. The director ~~shall have the authority to~~may approve requests to consolidate production equipment at a central location. The applicant shall provide all information requested by the director. The director may impose such terms and conditions as the director deems necessary.
2. Commingling of oil and gas production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.
 - a. A central production facility in which all production going into the facility has common ownership. For purposes of this section, production with common ownership is defined as production from wells that do not have diverse ownership.
 - b. A central production facility in which production going into the facility has diverse ownership. For purposes of this section, production with diverse ownership is defined as production from wells that are:
 - (1) In different drilling or spacing units; and
 - (2) Which have different mineral ownership.

3. The commingling of oil and gas production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of oil and gas production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of oil and gas production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.

a. Common ownership central production facility. The application for permission to commingle oil ~~and~~ gas, or both in a central production facility with common ownership must be submitted on a facility sundry notice (~~form 4~~) and shall include the following:

- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.
- (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
- (3) An affidavit executed by a person who has knowledge indicating that common ownership as defined above exists.
- (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

(5) List of all allocation meters to be used and the meter type.

A copy of all tests are to be filed with the director on a central tank battery well test form ~~4~~ within thirty days after the tests are completed.

b. Diverse ownership central production facility. The application for permission to commingle oil ~~and~~ gas, or both in a central production facility having diverse ownership must be submitted on a facility sundry notice (~~form 4~~) and shall include the following:

- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.
- (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
- (3) The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.
- (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed monthly.

(5) List of all allocation meters to be used and the meter type.

A copy of all tests are to be filed with the director on a central tank battery well test form ~~4~~ within thirty days after the tests are completed.

4. The commingling of produced water in a central production facility from two or more wells may be approved by the director provided the produced water production can be accurately determined at reasonable intervals. The application for permission to commingle water in a central production facility must be submitted on a facility sundry notice and shall include the following:
 - a. A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.
 - b. A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
 - c. An affidavit executed by a person who has knowledge indicating that common ownership as defined above exists; or an indication that it is not common ownership.
 - d. An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed quarterly for common ownership and monthly for diverse ownership central production facilities.
 - e. List of all allocation meters to be used and the meter type.
5. Any changes to a previously approved central production facility must be reported on a sundry notice (form 4) and approved by the director.

History: Effective May 1, 1992; amended effective September 1, 2000; May 1, 2004; April 1, 2020, April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.1. Treating plant permit requirements.

1. The treating plant permit application ~~shall~~must be submitted on form 1tp and shall include at least the following information:
 - a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed treating plant and the center of the site with reference to true north and the nearest lines of a governmental section. The plat shall also include the latitude and longitude of the center of the proposed treating plant location to the nearest tenth of a second, and the ground elevation. The plat shall also depict the outside perimeter of the treating plant and verification that the site is at least five hundred feet [152.4 meters] from an occupied dwelling.
 - c. A schematic drawing of the proposed treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all flow lines, and the location of the topsoil stockpile. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - d. Cut and fill diagrams.

- e. An affidavit of mailing identifying each owner of any permanently occupied dwelling within one-quarter mile of the proposed treating plant and certifying that such owner has been notified of the proposed treating plant.
 - f. Appropriate geological data on the surface geology and its suitability for fluid containment.
 - g. Schematic drawings of the proposed diking and containment, including calculated containment volume and all areas underlain by a synthetic liner.
 - h. Monitoring plans and leak detection for all buried or partially buried structures and any concrete structure upon which waste or product is in direct contact.
 - i. The capacity and operational capacity of the treating plant.
 - j. A narrative description of the process and how the waste and recovered product streams travel through the treating plant.
 - k. A review of the surficial aquifers within one mile of the proposed treating plant site or surface facilities.
 - l. Any other information required by the director to evaluate the proposed treating plant or site.
2. Permits may contain such terms and conditions as the director deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the director, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
 4. Permits are transferable only with approval of the director.
 5. Permits may be modified by the director.
 6. A permit ~~shall~~must automatically expire one year after the date it was issued, unless dirtwork operations have commenced to construct the site. The director may extend a treating plant permit for up to one year upon request.
 7. If the treating plant is abandoned and reclaimed, the permit ~~shall~~must expire and be of no further force and effect.

History: Effective April 1, 2014; amended effective October 1, 2016; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.3. Treating plant construction and operation requirements.

1. Before construction of a treating plant, treating plant site, or access road begins, the operator shall file with the director a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount ~~shall~~must be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable to the industrial commission. In no case ~~shall~~may the bond amount be set lower than fifty thousand dollars.

2. Treating plant sites and associated facilities or appropriate parts thereof **shall****must** be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All storage tanks **shall****must** be kept free of leaks and in good condition. Storage tanks for saltwater **shall****must** be constructed of, or lined with, materials resistant to the effects of saltwater. Open tanks are allowed if approved by the director.
4. All waste, recovered solids, and recovered fluids **shall****must** be stored and handled in such a manner to prevent runoff or migration offsite.
5. Dikes of sufficient dimension to contain the total capacity of the maximum volume stored must be erected and maintained around all storage and processing tanks. Dikes as well as the base within the diked area must be lined with a synthetic impermeable liner to provide emergency containment unless waived by the director. All processing equipment shall be underlain by a synthetic impermeable material, unless waived by the director. The site **shall****must** be sloped and diked to divert surface drainage away from the site. The operations of the treating plant shall be conducted in such a manner as to prevent leaks, spills, and fires. All discharged fluids and wastes shall be promptly and properly removed and shall not be allowed to remain standing within the diked area or on the treating plant premises. All such incidents **shall****must** be properly cleaned up, subject to approval by the director. All such reportable incidents **shall****must** be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.
6. A perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around the treating plant and to divert surface drainage away from the site if deemed necessary by the director.
7. Within thirty days following construction or modification of a treating plant, a sundry notice (form 4) must be submitted detailing the work and the dates commenced and completed. The sundry notice must be accompanied by a schematic drawing of the treating plant site drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks; the height and location of all dikes as well as a calculated containment volume; all areas underlain by a synthetic liner; any leak detection system installed; the location of all flowlines; the stockpiled topsoil location and its volume; and the road access to the nearest existing public road.
8. Immediately upon the commencement of treatment operations, the operator shall notify the director in writing of such date.
9. The operator of a treating plant shall provide continuing surveillance and conduct such monitoring and sampling as the director may require.
10. Storage pits, waste pits, or other earthen storage areas **shall****must** be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization **shall****must** be filed with the director.
11. Burial of waste at any treating plant site shall be prohibited. All residual water and waste, fluid or solid, **shall****must** be disposed of in an authorized facility.
12. The operator shall take steps to minimize the amount of residual waste generated and the amount of residual waste temporarily stored onsite. Solid waste shall not be stockpiled onsite unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the director.
13. If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis shall be performed by a certified

laboratory and shall adequately determine if chemical constituents exist which would categorize the waste as hazardous by department of environmental quality standards.

14. Treating plants ~~shall~~must be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and shall comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.
15. The beginning of month inventory, the amount of waste received and the source of such waste, the volume of oil sold, the amount and disposition of water, the amount and disposition of residue waste, fluid or solid, and the end of month inventory for each treating plant shall be reported monthly on form 5p with the director on or before the first day of the second succeeding month, regardless of the status of operations.
16. Records necessary to validate information submitted on form 5p ~~shall~~must be maintained in North Dakota.
17. All proposed changes to any treating plant must have prior approval by the director.
18. The operator shall comply with all applicable rules and orders of the commission. All rules in this chapter governing oil well sites shall also apply to any treating plant site.
19. The operator shall immediately cease operations if so ordered by the director for failure to comply with the statutes of North Dakota, commission rules or orders, or directives of the director.

History: Effective April 1, 2014; amended effective October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53.1. Saltwater handling facility permit requirements.

1. A permit for construction of a saltwater handling facility, saltwater handling facility site, or access road must be approved by the director prior to construction. The saltwater handling facility permit application must be submitted on a facility sundry notice (~~form 4~~) and include at least the following information:
 - a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed saltwater handling facility and the center of the site with reference to true north and the nearest lines of a governmental section. The plat also must include the latitude and longitude of the center of the proposed saltwater handling facility location to the nearest tenth of a second and the ground elevation. The plat also must depict the outside perimeter of the saltwater handling facility and verification that the site is at least five hundred feet [152.4 meters] from an occupied dwelling.
 - c. A schematic drawing of the proposed saltwater handling facility site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all flow lines, and the location and thickness of the stockpiled topsoil. The schematic drawing also must include the proposed road access to the nearest existing public road and the authority to build such access.
 - d. Cut and fill diagrams.

- e. Schematic drawings of the proposed diking and containment, including calculated containment volume and all areas underlain by a synthetic liner, as well as a description of all containment construction material.
 - f. The anticipated daily throughput of the saltwater handling facility.
 - g. A review of the surficial aquifers within one mile of the proposed treating plant site or surface facilities.
 - h. Any other information required by the director to evaluate the proposed saltwater handling facility or site.
2. Permits may contain such terms and conditions as the director deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the director, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
 4. Permits are transferable only with approval of the director.
 5. Permits may be modified by the director.
 6. A permit automatically expires one year after the date it was issued, unless dirtwork operations have commenced to construct the site. The director may extend a saltwater handling facility permit for up to one year upon request.
 7. If the saltwater handling facility is abandoned and reclaimed, the permit expires and is of no further force and effect.

History: Effective October 1, 2016; amended effective April 1, 2020; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Abandonment of wells, treating plants, underground gathering pipelines, or saltwater handling facilities - Suspension of drilling.

1. The removal of production equipment or the failure to produce oil or gas for one year constitutes abandonment of the well. The removal of production equipment or the failure to produce water from a source well for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The removal of monitoring equipment from or the failure to use a subsurface observation well for one year constitutes abandonment of the well. The failure to plug a stratigraphic test hole within one year of reaching total depth constitutes abandonment of the well. The removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant. The removal of saltwater handling facility equipment or the failure to use a saltwater handling facility for one year constitutes abandonment of the saltwater handling facility. An abandoned well must be plugged and its site must be reclaimed, an abandoned treating plant must be removed and its site must be reclaimed, and an abandoned saltwater handling facility must be removed and its site must be reclaimed, pursuant to sections 43-02-03-34 and 43-02-03-34.1. A well not producing oil or natural gas in paying quantities for one year may be placed in abandoned-well status pursuant to subsection 1 of North Dakota Century Code section 38-08-04. If an injection well is inactive for extended periods of time, the commission may, after notice and hearing, require the injection well to be plugged and abandoned. If an underground gathering pipeline is inactive for seven years, the commission may, after notice and hearing, require the pipeline to be properly abandoned pursuant to sections 43-02-03-29 and 43-02-03-29.1.

2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status for good cause. ~~This status may only be given to wells that are to be used for purposes related to the production of oil and gas within the next seven years.~~ If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status and each extension may be approved for up to one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well. A surface owner may request a hearing to review ~~of~~ a well temporarily abandoned for at least seven years pursuant to subsection 1 of North Dakota Century Code section 38-08-04. Temporarily abandoned status for oil and gas wells may be given only to wells that are to be used for purposes related to the production of oil and gas within the next seven years.
3. The director may approve an oil well for enhanced oil recovery potential status if the subject oil well was completed with surface casing set and cemented to properly isolate the Fox Hills formation, additional strings of casing are properly cemented to adequately protect and isolate all formations containing water, oil, or gas or any combination of these, protect the pipe through salt sections encountered, and isolate the uppermost sand of the Dakota group, and the director has deemed the subject well to have a potential use in an enhanced oil recovery project. If a well is given enhanced oil recovery potential status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. A surface owner may request a hearing to review a well that has been on enhanced oil recovery potential status for at least twelve years, pursuant to subsection 1 of North Dakota Century Code section 38-08-04.
4. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
- ~~4.5.~~ The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-08

43-02-08-01. Definitions.

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

1. "Commercial quantities" means production exceeding in value current operating costs.
2. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.
4. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
5. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that the qualified maximum total production from a well or property did not exceed the production levels as specified in subsection 2 of section 43-02-08-03.
6. "Well depth":
 - a. For a vertical or directional well means the lowest measured depth (measured in feet from the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one vertical or directional well on a property producing from the same pool during the qualifying period, "well depth" means the average of the lowest measured depths producing from the pool of all vertical and directional wells in the property.
 - b. For a horizontal well means the measured depth of the terminus of the horizontal lateral (measured in feet from the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one horizontal well on a property producing from the same pool during the qualifying period, "well depth" means the average measured depth of the termini of the horizontal laterals producing from the pool of all of the horizontal wells on the property.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1994; May 1, 2004; April 1, 2014; [April 1, 2024](#).

General Authority: NDCC ~~38-08-04(5)~~[38-08-04\(1\)\(e\)](#)

Law Implemented: NDCC ~~38-08-04(4)~~[38-08-04\(1\)\(d\)](#), 57-51.1-01

43-02-08-02. Application for stripper well or stripper well property determination.

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

The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The legal description of the well or property for which a determination is requested.

3. The well name and number and legal description of the oil-producing well or each oil-producing well on the property during the qualifying period and at the time of application.
4. The depth of all perforations (measured in feet from ground level) from the producing well or each producing well on the property during the qualifying period which produces from the same pool.
5. Designation of the well or property which the applicant requests to be certified as a stripper well or a stripper well property. Such designation must be accompanied by sufficient documentation for the director to determine (as set forth in section 43-02-08-02.1) that the well or property the applicant desires to be certified as a stripper well or a stripper well property constitutes a well or property as specified in North Dakota Century Code section 57-51.1-01.
6. The monthly production of the oil-producing well or each oil-producing well on the property during the qualifying period.

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

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999; July 1, 2002; April 1, 2014; [April 1, 2024](#).

General Authority: NDCC ~~38-08-04(5)~~[38-08-04\(1\)\(e\)](#)

Law Implemented: NDCC ~~38-08-04(4)~~[38-08-04\(1\)\(d\)](#), 57-51.1-01

43-02-08-02.1. Property determination.

The director recognizes the following as properties:

1. A unit.
2. A spacing unit.
3. Contiguous tracts within a lease.
4. A single well drilled and completed prior to July 1, 2013, is considered a single well stripper well property. A single well drilled and completed after June 30, 2013, is considered a single well stripper well.

Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission after notice and hearing or unless such property lies within a unitized common source of supply.

All wells on the property must have been completed prior to July 1, 2013. A well completed after July 1, 2013, ~~cannot~~[may not](#) be added to an existing property.

History: Effective September 1, 1987; amended effective May 1, 1992; May 1, 2004; April 1, 2014; October 1, 2016; [April 1, 2024](#).

General Authority: NDCC ~~38-08-04(5)~~[38-08-04\(1\)\(e\)](#)

Law Implemented: NDCC ~~38-08-04(4)~~[38-08-04\(1\)\(d\)](#), 57-51.1-01

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

1. Upon receipt of an application for stripper well or stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.

2. Stripper well or stripper well property status ~~will~~must be determined on the basis of the qualified maximum total production of oil from the well or property. In order to qualify production from a well or property as maximum total production, the oil-producing well or each oil-producing well on the property must have been maintained at the maximum efficient rate of production or is not capable of exceeding the production thresholds below if the well or property had been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period.
 - a. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
 - (3) Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
 - b. A well meets the requirements of a stripper well if the qualified maximum total production of oil from the well, excluding condensate, did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day;
 - (3) Production from a well outside the Bakken and Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day; or
 - (4) Production from a well in the Bakken or Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty-five barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well or stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application.
4. If an application for stripper well or stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for stripper well or stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the well or property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996; May 1, 2004; April 1, 2014; October 1, 2016; [April 1, 2024](#).

General Authority: NDCC ~~38-08-04(5)~~[38-08-04\(1\)\(e\)](#)

Law Implemented: NDCC ~~38-08-04(4)~~[38-08-04\(1\)\(d\)](#), 57-51.1-01

43-02-08-04. Applicant adversely affected may submit amended application - Procedure.

Any applicant adversely affected by a determination of the director made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination submit an amended application. If an amended application is submitted, the director shall issue a determination of stripper well or stripper well property status within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; April 1, 2014; [April 1, 2024](#).

General Authority: NDCC ~~38-08-04(5)~~[38-08-04\(1\)\(e\)](#)

Law Implemented: NDCC ~~38-08-04(4)~~[38-08-04\(1\)\(d\)](#), 57-51.1-01

43-02-08-05. Person adversely affected may petition the commission - Procedure.

Any person adversely affected by a determination of the director of either an application or an amended application for stripper well or stripper well property status made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and chapter 43-02-03.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; April 1, 2014; [April 1, 2024](#).

General Authority: NDCC ~~38-08-04(5)~~[38-08-04\(1\)\(e\)](#)

Law Implemented: NDCC ~~38-08-04(4)~~[38-08-04\(1\)\(d\)](#), 57-51.1-01

CHAPTER 43-02-10

43-02-10-02. Application to certify a qualifying secondary recovery project.

Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying secondary recovery project, and is entitled to the ~~tax reduction and~~ tax exemption provided in North Dakota Century Code ~~sections 57-51.1-02 and~~ section 57-51.1-03 ~~respectively~~.

History: Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002; April 1, 2024.

General Authority: NDCC 38-08-04

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

43-02-10-03. Commission certification of secondary recovery project.

Upon the filing of an application for certification of a qualifying secondary recovery project, the commission shall promptly set a date for hearing. In determining whether a secondary recovery project shall be certified as a "qualifying secondary recovery project", the commission shall determine:

1. The amount of crude oil which would have been recovered from the unit source of supply if the secondary recovery project had not been commenced; and
2. ~~Whether, for the purposes of a tax reduction, the secondary recovery project has achieved for six consecutive months an average production level of at least twenty five percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 1) if the secondary recovery project had not been commenced; and~~
- ~~3.~~ Whether, for the purposes of a tax exemption and subsequent thereto the tax reduction, there has been incremental production.

History: Effective May 1, 1992; amended effective April 1, 2024.

General Authority: NDCC 38-08-04

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

43-02-10-04. Application to certify a qualifying tertiary recovery project.

Any unit operator desiring to certify a tertiary recovery project as a "qualifying tertiary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying tertiary recovery project, and is entitled to the ~~tax reduction and~~ tax exemption provided in North Dakota Century Code ~~sections 57-51.1-02 and~~ section 57-51.1-03 ~~respectively~~.

History: Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002; April 1, 2024.

General Authority: NDCC 38-08-04

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

43-02-10-05. Commission certification of tertiary recovery project.

Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly set a date for hearing. In determining whether a tertiary recovery project shall be certified as a "qualifying tertiary recovery project", the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in ~~subsection 8~~subsection 6 of North Dakota Century Code section 57-51.1-01;
2. The amount of crude oil which would have been recovered from the unit source of supply if the tertiary recovery project had not been commenced;
3. Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been commenced; and
4. Whether, for the purposes of the tax exemption~~and subsequent thereto the tax reduction~~, there has been incremental production.

The commission ~~will~~shall, upon application or its own motion, have a hearing to determine whether the project operator continues to operate the unit as a qualifying tertiary recovery project.

History: Effective May 1, 1992; amended effective September 1, 2000; April 1, 2024.

General Authority: NDCC 38-08-04

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

CHAPTER 43-02-15

CERTIFICATION OF RESTIMULATION WELLS

Section

<u>43-02-15-01</u>	<u>Definitions</u>
<u>43-02-15-02</u>	<u>Application to Certify a Restimulation Well</u>
<u>43-02-15-03</u>	<u>Director Certification of a Restimulation Well</u>
<u>43-02-15-04</u>	<u>Operator Adversely Affected May Submit Amended Application - Procedure</u>
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<u>43-02-15-06</u>	<u>Books and Records to be Kept to Substantiate Reports</u>

43-02-15-01. Definitions.

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

History: Effective April 1, 2024.

General Authority: NDCC 38-08-04(1)(e)

Law Implemented: NDCC 38-08-04(1)(e), 57-51.1-01

43-02-15-02. Application to certify a restimulation well.

Any operator desiring to certify a restimulation well for purposes of eligibility for the tax reduction provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of the restimulation well. The operator has the burden of establishing entitlement to the certification and shall submit all data necessary to enable the director to determine whether the well should be certified as a restimulation well and entitled to the tax reduction provided in North Dakota Century Code section 57-51.1-03.

The application must be on a well sundry form and include the following:

1. The name and address of the operator of the restimulation well, including the phone number and electronic mail address of the submitting representative.
2. The well name and number, file number, and legal description of the surface location of the well by quarter-quarter, section, township, range, and county for which the certification is requested.
3. The field and pool for the well the restimulation was performed in for which the certification is requested.
4. The legal description of the spacing unit for the pool in the well the restimulation was performed in for which the certification is requested.
5. The original completion date for the pool in the well the restimulation was performed in for which the certification is requested.
6. The date previous stimulations were performed in pool in the well the restimulation was performed in for which the certification is requested.
7. A copy of the completion report for the pool in the well the restimulation was performed in for which the certification is requested, including the restimulation date and details.
8. Calculated barrels of oil per day for the most recent reporting month during which the restimulation well was produced at a maximum efficient rate for the pool in the well the restimulation was performed in for which the certification is requested.

9. Certification by the operator that:

- a. The restimulation well is not located within the exterior boundaries of a reservation, is not located on trust properties outside a reservation boundary as defined in North Dakota Century Code section 57-51.2-02, and is not a straddle well located on reservation trust land as defined in North Dakota Century Code section 57-51.1-07.10, unless a tribe has made an irrevocable election to opt-in to the tax reduction by providing written notice to the tax commissioner. A copy of such notice shall be included.
- b. The restimulation well is not a qualified stripper well or part of a qualified stripper well property as defined in North Dakota Century Code section 57-51.1-01.
- c. The restimulation well is not part of a qualifying secondary recovery project or qualifying tertiary recovery project as defined in North Dakota Century Code section 57-51.1-01.

The application for certification must be accompanied by sufficient documentation for the director to determine the restimulation well constitutes a well as specified in North Dakota Century Code section 57-51.1-01. If the application does not contain sufficient information to make a determination, the director may require the operator to submit additional information.

History: Effective April 1, 2024.

General Authority: NDCC 38-08-04(1)(e)

Law Implemented: NDCC 38-08-04(1)(e), 57-51.1-01

43-02-15-03. Director certification of a restimulation well.

1. Upon receipt of an application for restimulation well certification, the director shall review the application, information, and all relevant information contained in the books, files, and records of the commission.
2. Restimulation well certification must be determined on the basis of the qualified calculated maximum barrels of oil per day for the most recent reporting month prior to the restimulation operation during which the restimulation well was produced at a maximum efficient rate for the pool in the well the restimulation was performed in. To qualify production from a restimulation well for the calculated barrels of oil per day, the restimulation well must have been maintained at the maximum efficient rate of production or is not capable of exceeding the production threshold if the well had been maintained at the maximum efficient rate of production throughout the qualifying reporting month.
3. Within thirty days of the receipt of a complete application for restimulation well certification, or a reasonable time thereafter, the director shall either grant or deny the application.
4. If an application for restimulation well certification is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for restimulation well certification is granted, the director shall enter a written determination granting the application and forward a copy to the tax commissioner. A copy of the determination either granting or denying the restimulation well certification application must be forwarded by the director to the operator. It is the obligation of the operator to notify and advise all other owners in the well and the purchaser of the crude oil of the determination of the director.

History: Effective April 1, 2024.

General Authority: NDCC 38-08-04(1)(e)

Law Implemented: NDCC 38-08-04(1)(e), 57-51.1-01

43-02-15-04. Operator adversely affected may submit amended application - Procedure.

Any operator adversely affected by a determination of the director made under this chapter may submit an amended application within thirty days after the entry of such a determination. If an amended application is submitted, the director shall issue a determination either granting or denying the restimulation well certification within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective April 1, 2024.

General Authority: NDCC 38-08-04(1)(e)

Law Implemented: NDCC 38-08-04(1)(e), 57-51.1-01

43-02-15-05. Operator adversely affected may petition the commission - Procedure.

Any operator adversely affected by a determination of the director of either an application or an amended application for restimulation well certification made under this chapter may petition the commission within thirty days after the entry of such a determination for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and chapter 43-02-03.

History: Effective April 1, 2024.

General Authority: NDCC 38-08-04(1)(e)

Law Implemented: NDCC 38-08-04(1)(e), 57-51.1-01

43-02-15-06. Books and records to be kept to substantiate reports.

Any operator making application to certify a restimulation well pursuant to this chapter shall make and keep records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective April 1, 2024.

General Authority: NDCC 38-08-04(1)(e)

Law Implemented: NDCC 38-08-04(1)(e), 57-51.1-01

TITLE 49
MASSAGE THERAPY, BOARD OF

APRIL 2024

**CHAPTER 49-01-02
LICENSURE AND FEES**

Section	
49-01-02-01	Fees
49-01-02-02	License Applications
49-01-02-03	Expired Licenses
49-01-02-04	Grounds for Discipline
49-01-02-05	Continuing Education
<u>49-01-02-06</u>	<u>Medical and Behavioral Health Examination</u>

49-01-02-02. License applications.

To receive a license as a massage therapist, the applicant must complete an application provided by the board and must include the following additional information:

1. Sufficient proof to the board that the applicant has satisfied the educational requirements in article 49-02.
2. Passport size photo.
3. Proof of identity, including documentation of any name previously used by the applicant.
4. Proof of a passing score on a test approved by the board. The test results must be received directly from the organization administering or providing the test.
5. Completion of a jurisprudence examination on laws applicable to massage therapy in North Dakota with a score of 80 percent or higher.
6. For reciprocity applications, information on dates and location of prior massage therapy work experience.
7. A behavioral health assessment or both a physical and behavioral health assessment if the board reasonably believes the applicant has a physical or behavioral health condition jeopardizing the health of those who seek massage from the individual.
 - a. The cost of the ordered health assessment is the applicant's sole responsibility and the applicant may choose a licensed provider of their own choosing.
 - b. The applicant shall sign releases of information to the board for the ordered health assessment.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017; [April 1, 2024](#).

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-07, 43-25-09

49-01-02-05. Continuing education.

1. To renew a license as a massage therapist, the licenseholder must attest the licenseholder has obtained the required number of continuing education hours as outlined in North Dakota Century Code section 43-25-09, which may include proof of the date, [format of instruction](#), time, and location of the instruction, the name of the program or course, the instructor or instructors, and the provider of the program or course.
2. To qualify as continuing education under this section, the instruction must be offered by a qualified instructor and be directly related to the practice of massage therapy. The course of instruction must be approved by the board. The licenseholder or provider must identify the instructor of the course and describe the qualifications of the instructor, the topics covered during the course, and the total hours for which the licenseholder seeks approval. When deciding whether to approve continuing education, the board will consider the credentials of the provider and instructor. The board also will determine if the content of the course is appropriate for continuing education of massage therapy.
3. Continuing education may be obtained by remote means pursuant to board approval.
4. Continuing education hours must be earned in the two years prior to renewal and no hours may be carried over into the next two-year period.
5. For college credits to qualify as continuing education, the instruction must meet the above requirements and must be directly related to the practice of massage therapy as approved by the board.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-25-09

Law Implemented: NDCC 43-25-09

[49-01-02-06. Medical and Behavioral Health Examination.](#)

1. [The board may request the licensee complete a physical health assessment, a behavioral health assessment or both a physical and behavioral health assessment, if the board reasonably believes a massage therapist has a physical or behavioral health condition jeopardizing the health of those who seek massage from the individual.](#)
 - a. [The cost of ordered health assessment is the licensee's sole responsibility and the applicant may choose a licensed provider of their own choosing.](#)
 - b. [The licensee shall sign releases of information to the board for the ordered health assessment.](#)

History: [Effective April 1, 2024.](#)

General Authority: [NDCC 43-25-09](#)

Law Implemented: [NDCC 43-25-09](#)

ARTICLE 49-02
EDUCATIONAL REQUIREMENTS FOR LICENSURE

Chapter	
49-02-01	General Education Requirements
49-02-02	Classroom Instruction
49-02-03	Practical Instruction and Supervision of Students

CHAPTER 49-02-01

49-02-01-01. Hours of instruction.

1. To be eligible for a license as a massage therapist, an applicant must present a diploma or credentials issued by one or more schools of massage or school offering a massage program which indicate a cumulative total of seven hundred fifty hours of ~~supervised~~ instruction as determined under this article.
2. As used in this article, a "clock-hour" or hour of classroom or practical instruction means a sixty-minute block of time consisting of a minimum of fifty minutes of instruction with appropriate breaks.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017; [April 1, 2024](#).

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

CHAPTER 49-02-02

49-02-02-01. Hours of classroom instruction.

"Required hours of classroom instruction" means actual hours in attendance in class ~~under supervised instruction in the presence of~~ with face-to-face interaction with an instructor, including ~~synchronous or~~ through the use of technology that allows for visual and auditory live remote education. Other classes may be through asynchronous remote education.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017; April 1, 2024.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-02-02. Eligible classroom instruction.

1. Except as otherwise provided in this section or waived by the board for good cause, classroom instruction under this chapter must be provided by a licensed massage therapist at a recognized and approved school of massage and credit may not be given for prior educational instruction. In the case of a reciprocity application, the board may consider documented continuing education courses toward fulfilling the minimum seven hundred fifty hours of required education. In order to teach in North Dakota, the massage therapist must have at least three years of hands-on experience as a massage therapist, hold a current North Dakota license, and be in good standing with the board.
2. An instructor of anatomy, physiology, or pathology is not required to be a licensed massage therapist, but must have earned a recognized master's degree or higher, in an appropriate field of study. Instructors of first aid, sanitation and disease prevention, CPR, business practice and career development, or ethics must have appropriate credentials, but need not be licensed massage therapists.
3. A school of massage may give a student credit for prior educational instruction which was provided by a postsecondary institution. The maximum credit for prior instruction which may be given under this subsection is provided in subsection 5 of section 49-02-02-03.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017; April 1, 2024.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-02-03. Required curriculum.

1. The supervised required hours of classroom instruction received by an applicant must satisfy the following curriculum requirements:
 - a. One hundred fifty hours of anatomy, physiology, and kinesiology.
 - b. ~~Forty hours of pathology.~~
 - ~~c.~~ Ten hours of first aid and CPR. At the time of graduation, the applicant must hold a valid current CPR card certified by a nationally recognized organization to provide CPR instruction.
 - ~~d.~~ c. One hundred and thirty hours of introductory massage therapy courses, including basic and allied modalities, contraindications, sanitation, disease prevention, and massage theory.
 - ~~e.~~ ~~One hundred seventy-five hours of practical application and clinical practice.~~

2. The applicant must also satisfy the following curriculum requirements which do not require supervised face-to-face interaction with the classroom instruction instructor:

a. Fifty hours of business practices, career development, and professional ethics.

b. ~~Seventy-five hours of clinical practice.~~

~~c. One hundred twenty hours of other courses directly related to massage therapy.~~

c. Forty hours of pathology.

3. Each hour of instruction may be applied to only one of the above categories.

4. To be counted under this section, the instruction must reflect current scientific knowledge and standards.

5. The number of classroom hours specified in subdivisions a through b of subsection 1 also is the maximum amount of prior education credits in each subject which may be given under section 49-02-02-02.

6. Hours of instruction for programs which measure their instruction in credit hours per semester or per quarter shall be determined as follows:

a. For semester credits, fifteen clock-hours of lecture equals one credit hour and thirty clock-hours of practical instruction (clinical or lab) equals one credit hour.

b. For quarter credits, ten clock-hours of lecture equals one credit hour and twenty clock-hours of practical instruction (clinical or lab) equals one credit hour.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017; April 1, 2024.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

CHAPTER 49-02-03
PRACTICAL INSTRUCTION ~~AND SUPERVISION OF STUDENTS~~

Section

49-02-03-01	Hours of Practical Instruction
49-02-03-02	Direct Supervision of Students
49-02-03-03	Required Curriculum [Repealed]

49-02-03-02. Direct supervision of students.

As used in this chapter and in North Dakota Century Code chapter 43-25, "direct supervision of a licensed massage therapist" has the following meaning:

1. For a student receiving practical instruction in the classroom setting, the supervising massage therapist must be in the same room as the student at all times during the massage. A massage therapist may supervise up to eight massages at a time (sixteen students) under this subsection.
2. For a student receiving practical instruction through field experience, internship, externship, or a student clinic, the supervising massage therapist must be present on the premises at all times during the massage, which means the instructor is readily accessible to the students at all times. A massage therapist may supervise up to eight massages at a time, sixteen students, under this subsection.
3. Notwithstanding any other provision in this section, a supervising massage therapist must exercise an appropriate degree of supervision at all times. Failure to do so is grounds for disciplinary action by the board.
4. Any student practicing outside of the student's school under a field experience ~~or,~~ internship, or externship in North Dakota must be supervised by a licensed massage therapist with a minimum of three years of experience. Before applying massage techniques to a member of the public, ~~as a part of the student's education, under a field experience, internship, or externship,~~ a student must have completed, or received prior education credit for, at least two hundred twenty-five hours of classroom instruction and at least one hundred fifty hours of practical instruction in the classroom setting. A facility that contracts with a school to provide field experience, internship, or externship experiences for students may continue to charge the facility's usual fees for the services the student performs. Students may not be paid for providing these services. Students may accept tips only, directly from the client.
5. A student attending a North Dakota massage therapy school shall have at least one hundred fifty hours of instruction before beginning to practice on the public. A student may accept tips only, directly from the client. A student is not allowed any other remuneration for providing massage services.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017; April 1, 2024.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-04, 43-25-07

CHAPTER 49-03-01

49-03-01-01. Sanitation, location, and conditions.

1. The portion of a massage establishment in which a massage is provided, and any waiting room and hallway leading to that area, must be in a safe, clean, and sanitary condition at all times. This subsection does not apply when the massage is provided in a client's own home, or when the massage is provided as a public demonstration in a location other than the massage therapist's usual establishment.
2. If the massage establishment is also the residence of the massage therapist providing the massage, the room must be set up as a professional setting and maintained in a safe, clean, and sanitary condition when it is being used for massage purposes.
3. Any mirrors and windows in the massage establishment will be positioned or covered in a manner to maintain the privacy of the person receiving the massage at all times during the massage and while the client is dressing and undressing.
4. Prior to providing massage to a new client, the therapist shall introduce themselves and explain to the client details of what to anticipate during the massage, including how draping of the client is performed during the massage and as the client is asked to change positions during the massage. A written informed consent must be signed by the client prior to starting the massage. A therapist must provide draping and treatment in a way that ensures the personal safety, comfort, and privacy of the client.
5. The therapist is responsible for maintaining all equipment and supplies in good working order and in accordance with any manufacturer's instruction.
6. It is unlawful for a massage therapist to provide alcohol to a client in the portion of a massage establishment in which a massage is provided.
7. The establishment must have an adequate supply of hot and cold running water to conduct business in a sanitary manner. A restroom must also be available on the premises.
8. Licensees shall maintain records of their clients and ensure that client records are stored so they are not readily accessible to the public.
9. No smoking may occur in the portion of the massage establishment in which a massage is provided.
10. All tools, instruments, implements, and equipment must be clean and disinfected before use on a client.
11. All linens, coverings, sheets, towels, and pillow casings must be properly cleaned before coming into contact with a client.
12. All liquids, creams, and other products must be kept in clean, closed containers. Original product bottles and containers must have an original manufacturer label disclosing contents. All products used on a client must be dispensed by a spatula, scoop, spoon, squeeze bottle, pump, dropper, or similar dispenser, so the remaining product is not contaminated. Unused products applied to one client must be disposed of and not used on another client.
13. Cabinets, drawers, and containers used for storage of tools, equipment, instruments, and towels/linens must be clean.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017; April 1, 2018; April 1, 2024.

General Authority: NDCC 28-32-02, 43-25-03

Law Implemented: NDCC 43-25-03

TITLE 50
NORTH DAKOTA BOARD OF MEDICINE

APRIL 2024

**ARTICLE 50-01
GENERAL ADMINISTRATION**

Chapter	
50-01-01	Organization of Board
50-01-02	Rulemaking [Repealed]
<u>50-01-03</u>	<u>Record Retention</u>

CHAPTER 50-01-01

50-01-01-01. Organization of North Dakota board of medicine.

1. **History and function.** The 1890 legislative assembly passed a medical practice act, codified as North Dakota Century Code chapter 43-17. This chapter requires the governor to appoint a state board of medicine. It is the responsibility of the board to protect the health, safety, and welfare of the public by licensing qualified and competent individuals.
2. **Executive director.** The executive director of the board is appointed by the board and is responsible for administration of the board's activities.
3. **Inquiries.** Inquiries regarding the board may be addressed to the executive director:

Executive Director
North Dakota Board of Medicine
4204 Boulder Ridge Road, Suite 260
Bismarck, 58503-6392

History: Amended effective December 1, 1980; September 1, 1983; July 1, 1988; November 1, 1993; December 1, 1993; August 1, 2003; January 1, 2009; October 1, 2022; April 1, 2024.

General Authority: NDCC 43-17-07.1

Law Implemented: NDCC ~~43-17-03~~ 43-17-06, 43-17-07.1

CHAPTER 50-01-03 RECORD RETENTION

Section

50-01-03-01 Record Retention

50-01-03-01. Record retention.

1. A licensee shall retain all medical records unless otherwise appropriately transferred to another licensee or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.
2. Beginning January 1, 2024, a licensee shall appoint another North Dakota licensee or other representative or entity, to ensure that all requirements of this section are met in the event of the licensee's death or incapacitation. Upon request by the board, the licensee shall show proof of appointment of a representative.
3. Upon a licensee's death or retirement, the sale of a medical practice, or a licensee's departure from the licensee's medical practice:
 - a. The licensee or the licensee's representative shall ensure all medical records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.
 - b. The licensee or the licensee's representative shall notify all active patients that the patient's records will be transferred to another licensee or entity that will retain custody of the patient's records and that, at the patient's written request, the records will be sent to the patient, licensee, or entity of the patient's choice.
 - c. The licensee or the licensee's representative shall notify the board of the location and contact information of the custodian of the records which may be provided to a patient requesting such information.

History: Effective April 1, 2024.

General Authority: NDCC 43-17-07.1(10)

Law Implemented: NDCC 43-17-27.2

CHAPTER 50-02-01

50-02-01-01. License for interval between board meetings.

An officer of the board and the board's executive director or deputy executive director may issue a locum tenens license or a provisional temporary license to an applicant who is seeking a permanent North Dakota medical license if in their judgment the applicant meets all of the requirements for licensure. A provisional temporary license is valid from the date of issue until the time of the next regularly scheduled meeting of the board.

History: Amended effective December 1, 2000; August 1, 2003; January 1, 2009; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-13~~[43-17-07.1\(10\)](#)

Law Implemented: NDCC ~~43-17-21~~[43-17-18\(5\)](#)

50-02-01-02. License for locum tenens.

A license for "locum tenens" may be issued for a specific practice location or health care facility and for a period not to exceed three months.

History: Amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-07~~~~43-17-13~~[43-17-07.1\(10\)](#)

Law Implemented: NDCC ~~43-17-21~~[43-17-07.1\(8\)](#)

CHAPTER 50-02-02

50-02-02-01. Exceptions to technical requirements on licensure.

A license issued under this section is, for all purposes, the same as a regular medical license issued by the board.

1. The board shall issue a license to an applicant who holds a current valid letter of qualification issued through the interstate medical licensing compact. The issuance of a license does not preclude the board's ability to require additional information from the applicant. An applicant who fails to complete the addendum questions within thirty days must be assessed a fee of five hundred dollars and may be subject to disciplinary action.
2. The board may issue a medical license to an applicant who does not meet all technical eligibility requirements if the board determines the applicant is uniquely qualified through training or experience or will make a unique or special contribution to the practice of medicine not readily available to the citizens of the state. In applying this rule, the board shall make written findings supporting the issuance of a special license. In addition to the potential benefit to the state, the board shall include in its analysis consideration of the following:
 - a. Board certification;
 - b. Nature and length of medical practice;
 - c. Nature and length of postgraduate training or research;
 - d. Licenses issued by other states;
 - e. The existence of disciplinary actions by other medical boards or adverse actions by medical facilities;
 - f. History of malpractice judgments or settlements;
 - g. Licensing examinations, such as the United States medical licensing examination (USMLE) or special purpose examination (SPEX); and
 - h. Such other considerations that bear upon an applicant's eligibility.

History: Amended effective February 1, 1985; January 1, 2018; January 1, 2020; April 1, 2024.

General Authority: NDCC ~~28-32-02~~43-17-07.1(10)

Law Implemented: NDCC ~~43-17~~43-17-18(4), 43-17-46

CHAPTER 50-02-02.1

50-02-02.1-01. Administrative license.

The board may issue a license that is limited to administrative medicine, which is defined as administration or management using the medical knowledge, skill, and judgment of a licensed physician that may affect the health of any member of the public.

An administrative medical license does not permit the licensee to practice clinical medicine which, for purposes of this rule, includes the provision of any patient diagnosis or treatment, the prescribing of any drug, or the delegation of medical authority to, or the supervision of, any health professional. The board shall require an applicant for an administrative medical license to sign an acknowledgment of these limitations prior to the issuance of an administrative medical license.

An applicant for an administrative medical license must meet all the eligibility requirements for a regular medical license, except that the applicant will not be required to demonstrate the maintenance of an active clinical practice prior to applying for an administrative medical license.

The holder of an administrative medical license is subject to the same rules and regulations as those holding a regular medical license, including the regulations governing license renewal, fees, continuing medical education, and discipline.

History: Effective January 1, 2018; amended effective April 1, 2024.

General Authority: NDCC ~~28-32-02~~43-17-07.1(10)

Law Implemented: NDCC ~~43-17-07.1~~43-17-07.1(8)

CHAPTER 50-02-03

50-02-03-01. Medical licensure examination.

Those applicants for licensure who have obtained a passing score on the FLEX (federation licensing examination), the NBME (national board of medical examiners) examination, the USMLE (United States medical licensing examination), the LMCC (licentiate of the medical council of Canada) examination, the NBOME (national board of osteopathic medical examiners) examination, or the COMLEX (comprehensive osteopathic medical licensing examination) shall be deemed to have met the medical licensure examination requirement specified in subdivision a of subsection 1 of North Dakota Century Code section 43-17-18.

History: Amended effective May 1, 2002; [April 1, 2024](#).

General Authority: NDCC ~~28-32-02~~[43-17-07.1\(1\)](#)

Law Implemented: NDCC ~~43-17-21~~[43-17-18](#)

CHAPTER 50-02-05

50-02-05-01. Standard certificate from educational commission required.

All applicants for licensure who are graduates of foreign medical schools, except the medical schools of Canada, the United Kingdom, Australia, and New Zealand, are required to present a valid certification status from the educational commission for foreign medical graduates. This requirement shall not apply to applicants who were first licensed to practice medicine in the United States prior to the availability of the educational commission for foreign medical graduates examination.

History: Amended effective April 1, 1996; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-21~~[43-17-18](#)

Law Implemented: NDCC ~~43-17-21~~[43-17-18](#)

CHAPTER 50-02-07.1

50-02-07.1-02. Unlicensed practice fees.

A physician seeking to renew a license who has failed to complete the registration process within three years from the expiration date must be assessed a fee equal to ~~three times the normal annual registration fee~~ five hundred dollars, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired.

History: Effective January 1, 2010; amended effective October 1, 2022; April 1, 2024.

General Authority: NDCC 43-17-25, 43-17-26.1

Law Implemented: NDCC 43-17-26.1

50-02-07.1-03. Administrative sanction.

An administrative sanction ~~shall~~ must be imposed in the amount of ~~three times the normal annual registration fee~~ five hundred dollars for any applicant or licensed physician who provides false or deceptive information with regard to any material fact concerning eligibility for initial licensure or renewal after verifying or certifying that the information provided is true. This includes all material information provided in an initial license application, an annual registration renewal, or a report of compliance with mandatory continuing education requirements.

The imposition of an administrative sanction under this section is not a disciplinary action of the board; however, it does not preclude the board from also imposing disciplinary action, or other penalties provided by law, for the same conduct in appropriate cases.

An applicant or licensed physician may challenge the imposition of an administrative sanction under this section in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge.

History: Effective January 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 43-17-07.1(3)

Law Implemented: NDCC 43-17-25

CHAPTER 50-02-11

50-02-11-03.1. Limitation on attempts at examination passage.

1. An applicant is permitted a maximum of three attempts to pass each step or part or component of a licensing examination. This rule does not apply to an individual who required more than three attempts to pass USMLE step 1 or USMLE step 2 if that individual was enrolled in a postgraduate training program in North Dakota prior to July 10, 2005, and if:
 - a. The individual is still enrolled in the program when the application for licensure is submitted to the board's office; or
 - b. The individual has completed the program successfully.

Parts, steps, and components may not be combined so as to enlarge the number of attempts permitted under this rule.
2. Upon review of an individual applicant, the board may allow an exception to this rule if it finds that it is in the best interest of the state and the applicant:
 - a. Is validly licensed as a physician in another state;
 - b. Has practiced a minimum of five years;
 - c. Has no disciplinary actions imposed by any other state medical licensing board within the last ten years immediately preceding the date of application; and
 - d. Is certified by a specialty board recognized by the American board of medical specialties or by the royal college of physicians and surgeons of Canada.
3. Upon review of an individual applicant, the board may allow an exception to this rule if it finds it is in the best interest of the state and the applicant shows a documented disability as determined by the board.

History: Effective June 1, 2005; amended effective October 1, 2011; April 1, 2020; October 1, 2022; April 1, 2024.

General Authority: NDCC 43-17-18

Law Implemented: NDCC 43-17-18

CHAPTER 50-02-13

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 North Dakota board of medicine.
3. "Resident" means a person who is enrolled in an approved postgraduate training program.

History: Effective May 1, 2000; amended effective April 1, 2024.

General Authority: NDCC ~~43-17-02(1)~~43-17-02.5

Law Implemented: NDCC ~~43-17-02(1)~~43-17-02.5

50-02-13-02. License requirement.

A person may not participate in an approved postgraduate training program in this state unless that person has first been granted a license by the board.

History: Effective May 1, 2000; amended effective October 1, 2022; April 1, 2024.

General Authority: NDCC ~~43-17-02(1)~~43-17-02.5

Law Implemented: NDCC ~~43-17-02(1)~~43-17-02.5

50-02-13-02.1. License requirement - Exception.

The provisions of section 50-02-13-02 notwithstanding, a resident who is enrolled in an approved postgraduate training program in another state may complete a rotation in this state without obtaining a North Dakota license if:

1. The out-of-state postgraduate training program is accredited by the accreditation council for graduate medical education;
2. Participation in the North Dakota rotation is an official component of the participant's postgraduate training program;
3. The North Dakota rotation will be completed within ninety days or less; and
4. The participant holds a valid unencumbered license to participate in postgraduate training programs in the state in which the participant's postgraduate training program is located. If that state does not require residents to hold a license, then the individual must obtain a North Dakota license before beginning the rotation in this state.

The director of the postgraduate training program shall provide written notice to the board with the names of individuals and the state of licensure who are practicing under this exception within twenty days.

History: Effective November 1, 2002; amended effective October 1, 2022; April 1, 2024.

General Authority: NDCC ~~43-17-02(1)~~43-17-02.5

Law Implemented: NDCC ~~43-17-02(1)~~43-17-02.5

50-02-13-03. Qualifications.

The board may issue an approved 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; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

50-02-13-04. Applications.

Applications for a postgraduate training license or the annual renewal of an approved 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; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

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; [amended effective April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

50-02-13-06. Discipline.

Individuals who have been granted an approved 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.

Upon verification under section 50-02-13-08 that a resident has been terminated or resigned from the postgraduate training program, the license automatically expires. The expiration of a resident's license does not preclude the board from taking disciplinary action as provided in this section.

History: Effective May 1, 2000; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

50-02-13-07. Period of licensure.

A postgraduate training license may, in the discretion of the board, be issued for a period of one or more years. However, in no event shall the license be issued for a period of time exceeding the date on which the applicant is reasonably expected to complete the approved postgraduate training program for which the license is being issued.

In the event a license is issued for a period of time exceeding one year, the board may nevertheless require the licensee to periodically supply information to the board regarding the licensee's credentials and ability to practice in a competent and safe manner. Failure to provide that information to the board will constitute a violation of subdivision bb of subsection 1 of North Dakota Century Code section 43-17-31.

The board may issue a temporary postgraduate training license to allow the applicant to participate in an approved 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; amended effective April 1, 2006; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

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, a postgraduate training licensee and the director of each postgraduate training program must report within ten days 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; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

50-02-13-09. Fees.

The fee for a postgraduate training license is one hundred dollars for the duration of the postgraduate training program. That fee shall be paid in full at the time the license is issued.

History: Effective May 1, 2000; amended effective April 1, 2006; July 1, 2013; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

Law Implemented: NDCC ~~43-17-02(1)~~[43-17-02.5](#)

CHAPTER 50-03-01

50-03-01-02. Licensure requirements.

Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant satisfies all of the requirements for licensure, including:

1. Satisfactory proof of graduation from a physician assistant program;
2. Successful passage of the certifying examination of the national commission on certification of physician assistants or other certifying examinations approved by the North Dakota board of medicine. The physician assistant must maintain certification with the national commission on certification of physician assistants or other certifying entity approved by the board during the entire period of licensure;
3. Payment of the fee as required by section 50-03-01-13;
4. Submission to a statewide and nationwide criminal history record check pursuant to subsection 4 of North Dakota Century Code section 43-17-07.1; and
5. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction, of the commission of any act that would constitute grounds for disciplinary action.

History: Amended effective July 1, 1988; November 1, 1993; January 1, 2020; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

Law Implemented: NDCC 43-17-02.1

50-03-01-10.1. Disciplinary action.

The board is authorized to take disciplinary action against a licensed physician assistant in accordance with North Dakota Century Code chapter 43-17.1 by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the duties of a physician assistant.
5. Letter of censure.
6. Require the licensee to provide free public or charitable service for a defined period.
7. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the North Dakota board of medicine must be deposited in the state general fund.

History: Effective August 1, 2002; amended effective October 17, 2002; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-10.2. Disciplinary proceedings.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician assistant, the board may direct any physician assistant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels of the board in the investigation and prosecution of the case. If applicable, the physician assistant's license may be suspended until the costs are paid to the board. A physician assistant may challenge the reasonableness of any cost item in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the physician assistant's license may be suspended for nonpayment.

History: Effective January 1, 2020; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-11. Grounds for disciplinary action.

The board may deny an application for licensure or may take disciplinary action against a physician assistant upon any of the following grounds:

1. Failing to demonstrate the qualifications for licensure under this act or the regulations of the board.
2. Soliciting or receiving any form of compensation from any person other than the physician assistant's employer or third-party payer for services performed as a physician assistant.
3. The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements.
4. The making of false or misleading statements about the physician assistant's skill or the efficacy of any medicine, treatment, or remedy.
5. The conviction of any misdemeanor, determined by the board to have a direct bearing upon a person's ability to serve the public as a physician assistant, or any felony. A license may not be withheld contrary to the provisions of North Dakota Century Code chapter 12.1-33.
6. ~~The habitual or excessive use~~[Use of intoxicants](#)~~alcohol~~ or drugs [to such a degree as to interfere with the licensee's ability to safely practice medicine.](#)
7. Physical or mental disability materially affecting the ability to perform the duties of a physician assistant in a competent manner.
8. Aiding or abetting the practice of medicine by a person not licensed by the board or by an incompetent or impaired person.
9. Gross negligence in the performance of the person's duties as a physician assistant.
10. Manifest incapacity or incompetence to perform as a physician assistant.
11. The willful or negligent violation of the confidentiality between physician assistant and patient, except as required by law.
12. The performance of any dishonorable, unethical, or unprofessional conduct.
13. Obtaining any fee by fraud, deceit, or misrepresentation.

14. The violation of any provision of a physician assistant practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
15. Representing himself or herself to be a physician.
16. The advertising of the person's services as a physician assistant in an untrue or deceptive manner.
17. Sexual abuse, misconduct, or exploitation related to the licensee's performance of the licensee's duties as a physician assistant.
18. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
19. The failure to comply with the reporting requirements of North Dakota Century Code section 43-17.1-05.1.
20. A continued pattern of inappropriate care as a physician assistant.
21. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of the person's duties as a physician assistant.
22. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
23. The violation of any state or federal statute or regulation relating to controlled substances.
24. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to perform duties as a physician assistant based upon acts or conduct by the physician assistant that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
25. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
26. The failure to furnish the board or the investigative panel, their investigators or representatives, information legally requested by the board or the investigative panel.
27. Noncompliance with the physician health program established under North Dakota Century Code chapter 43-17.3.

History: Amended effective July 1, 1988; November 1, 1993; April 1, 1996; October 1, 1999; August 1, 2002; January 1, 2020; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9), 43-17-13~~[43-17-02.1](#)

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-13. Fees.

The fee for initial licensure of a physician assistant is fifty dollars per year. The renewal fee is fifty dollars per year. The fee for license verification is thirty dollars.

History: Effective July 1, 1988; amended effective November 1, 1993; December 1, 1996; October 1, 1999; January 1, 2020; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9), 43-17-13~~[43-17-02.1](#)

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-14. License renewal requirements.

The physician assistant's license renewal application must be accompanied with evidence of current certification by the national commission on certification of physician assistants or other certifying entity approved by the board.

History: Effective August 1, 1989; amended effective November 1, 1993; October 1, 1999; July 1, 2013; January 1, 2020; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-15. Forms of licensure.

The North Dakota board of medicine may recognize the following forms of licensure for a physician assistant and may issue licenses accordingly:

1. Permanent licensure - which will continue in effect so long as the physician assistant meets all requirements of the board.
2. Locum tenens permit - which may be issued for a specific health care facility and for a period not to exceed three months.

History: Effective July 1, 1994; amended effective October 1, 1999; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-16. Renewal of licenses.

Provided that all renewal requirements are deemed by the board to be met, a physician assistant who applies for renewal of a physician assistant license within thirty-one days of the expiration date of that license shall be granted a license with an effective date of the first day following expiration of the physician assistant's license. Nothing in this rule shall be construed to affect the board's ability to impose statutory fines or other disciplinary action against a physician assistant for failing to renew a license prior to its expiration date or for practicing with an expired license. A physician assistant whose license lapsed more than three years before the physician assistant petitioned the board for reinstatement shall submit a new application for licensure.

History: Effective October 1, 2011; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 43-17-07.1

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-17. Late fees.

A physician assistant seeking to renew the license who has failed to complete the annual registration process within three years from the expiration date must be assessed a fee ~~equal to three times the normal license registration fee~~ [of two hundred and fifty dollars](#), in addition to such other penalties as are authorized by law, if that physician assistant is found to have been practicing in this state after the physician assistant's license expired. A physician assistant may renew the expired license upon payment of fifty dollars per year, up to three years, for each year past the renewal deadline.

History: Effective October 1, 2011; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 43-17-07.1

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

50-03-01-19. Physician assistant - Reporting requirements.

A physician assistant 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 physician assistant must report to the board within ten days if the individual no longer holds a valid certification from the national commission on certification of physician assistants. Upon verification that the physician assistant no longer holds the certification, the license automatically expires. The expiration of the physician assistant license under this section does not preclude the board from taking disciplinary action.

History: Effective October 1, 2022; [amended effective April 1, 2024.](#)

General Authority: NDCC 43-17-07.1

Law Implemented: NDCC ~~43-17-02(9)~~[43-17-02.1](#)

CHAPTER 50-04-01

50-04-01-01. Requirements.

Except as is otherwise specified in this chapter, every physician licensed to practice medicine in North Dakota shall complete no less than ~~sixty~~forty hours of board-approved continuing medical education (CME) every ~~three~~two years. One hour of credit will be allowed for each clock-hour of participation in approved continuing medical education activities.

History: Effective November 1, 1998; amended effective April 1, 2024.

General Authority: NDCC 43-17-27.1

Law Implemented: NDCC 43-17-27.1

50-04-01-02. Exceptions.

The following physicians are not required to meet the requirements of this chapter.

1. Physicians who are enrolled in full-time graduate medical education programs (residencies and fellowships) which are accredited by the accreditation council on graduate medical education or the American osteopathic association.
2. Physicians who hold a locum tenens permit or a special license and physicians who have not renewed their licenses for the first time since being granted a regular permanent license by the board.
3. Physicians who have retired from the active practice of medicine. This exception is available only to retired physicians who have completely and totally withdrawn from the practice of medicine. Any physician seeking to be excused from completing CME requirements under this subsection must submit an affidavit to the North Dakota board of medicine (on the board's form) certifying that the physician will render no medical services during the term of the next CME reporting period.
4. The board may grant an extension of time or other waiver to a licensee who, because of prolonged illness or other extenuating circumstances, has been unable to meet the CME requirements.
5. Physicians who hold a current certification, maintenance of certification, or recertification by a member of the American board of medical specialties, the American osteopathic association, or the royal college of physicians and surgeons of Canada at the time of the CME audit.

History: Effective November 1, 1998; amended effective April 1, 2024.

General Authority: NDCC 43-17-27.1

Law Implemented: NDCC 43-17-27.1

50-04-01-04. Compliance.

1. All physicians will periodically be required to answer questions on the board's ~~annual~~ license renewal forms to establish compliance, or eligibility for an exception, pursuant to this chapter. Physicians are not required to provide additional documentation of compliance with continuing education requirements unless specifically requested to do so by the board.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than one year but less than two full years will be required to demonstrate completion of twenty hours of board-approved CME credits during that physician's initial CME reporting period.

~~Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than two years but less than three full years will be required to demonstrate completion of forty hours of board-approved CME during that physician's initial CME reporting period.~~

False statements regarding satisfaction of continuing education requirements on the renewal form or on any documents connected with the practice of medicine may subject the licensee to disciplinary action by the board.

2. The board will audit randomly selected physicians to monitor compliance with the continuing medical education requirements. Any physician so audited will be required to furnish documentation of compliance including the name of the accredited CME provider, name of the program, hours of continuing medical education completed, dates of attendance, evidence of credit designation (i.e., category 1 designation, prescribed credit designation, etc.), and verification of attendance. Any physician who fails to provide verification of compliance with the CME requirements will be subject to a fee of five hundred dollars and possible revocation of licensure.
3. In order to facilitate the board's audits, every physician is required to maintain a record of all CME activities in which the physician has participated. Every physician must maintain those records for a period of at least one year following the time when those CME activities were reported to the board.

History: Effective November 1, 1998; amended effective July 1, 2013; October 1, 2022; April 1, 2024.

General Authority: NDCC 43-17-27.1

Law Implemented: NDCC 43-17-27.1

ARTICLE 50-06
NATUROPATHIC LICENSURE

<u>Chapter</u>	
<u>50-06-01</u>	<u>Admission to Practice Naturopathic Medicine</u>
<u>50-06-02</u>	<u>Authority of Naturopaths</u>
<u>50-06-03</u>	<u>Continuing Naturopathic Education</u>

CHAPTER 50-06-01
ADMISSION TO PRACTICE NATUROPATHIC MEDICINE

<u>Section</u>	
<u>50-06-01-01</u>	<u>Definitions</u>
<u>50-06-01-02</u>	<u>Approvals of Schools</u>
<u>50-06-01-03</u>	<u>Applications for Licensure</u>
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<u>50-06-01-11</u>	<u>Fees</u>
<u>50-06-01-12</u>	<u>Administrative Sanction</u>

50-06-01-01. Definitions.

Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-58 are applicable to this title. In this title, unless the context or subject matter otherwise requires:

1. "Administration" means the intradermal, intramuscular, intravenous, oral, rectal, subcutaneous, sublingual, topical, auricular, nasal, ocular, or vaginal routes of administration in accordance with naturopathic medical training.
2. "Council" means the council on naturopathic medical education or its successor. The successor must be an accrediting agency recognized by the United States department of education.
3. "In accordance with naturopathic medical training" means the practice of naturopathic medicine by means that are consistent with the education of an approved naturopathic medical college, are generally recognized as safe and effective, and generally considered to be within the accepted practice standards for the naturopathic profession.
4. "Manipulation of the spine" means therapeutic osseous manipulation techniques to realign the cervical, thoracic, and lumbar vertebrae and sacrum.
5. "National board" means the North American board of naturopathic examiners or its successor.
6. "National board examinations" means the naturopathic physicians licensing examinations (NPLEX) or its successor.
7. "Nondrug prescription device" includes diabetic supplies, intrauterine devices, cold lasers, orthotics, and transcutaneous electrical stimulation units.

8. "Nonprescription topical drug" means a topical analgesic, antibacterial, antifungal, antiseptic, antipruritic, or hormone that is not a prescription drug.
9. "Prescription drug" means a legend drug as defined by section 503(b) of the Act of Congress entitled the Federal Food, Drug and Cosmetic Act [21 U.S.C. 353 et seq.] and under its definitions its label is required to state "Rx only".

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

50-06-01-02. Approval of schools.

The board shall approve a naturopathic medical school if it meets the definition pursuant to North Dakota Century Code section 43-58-01 and is accredited by the council.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-05

50-06-01-03. Applications for licensure.

Application must be made on the official form issued by the board.

1. Applicants seeking licensure pursuant to North Dakota Century Code section 43-58-05 must be considered when all of the following have been received:

- a. A signed and dated completed official application form.
- b. An official transcript of the national board examinations sent directly to the board from the national board verifying satisfactory passage of both part one and part two.
- c. An official complete transcript sent directly to the board from the approved naturopathic medical school from which the applicant graduated verifying date of graduation and completion of clinical training.
- d. The license fee.

2. Applicants seeking a license or limited license pursuant to North Dakota Century Code section 43-58-06 shall submit the following documents for consideration:

- a. A signed and dated completed official application form.
- b. An official school transcript verifying graduation from a school of naturopathy.
- c. Documentation of supervised clinical training and practical postgraduate clinical experience, including dates, clinic contact information, and supervisor contact information for verification purposes.
- d. Documentation of North Dakota residency throughout calendar year 2011.
- e. Documentation of the practice of naturopathy in North Dakota in 2011.
- f. The initial licensing fee.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-04, 43-58-05, 43-58-06

50-06-01-04. Licensure by reciprocity.

An application for license by reciprocity shall be considered by the board if the following conditions are met:

1. The candidate has graduated from and holds a degree from an approved naturopathic medical school.
2. The candidate holds a current valid license in good standing to practice as a naturopath in another state or jurisdiction. Official written verification of licensure status must be received by the board from the other state or jurisdiction.
3. The examination requirements of the other state or jurisdiction are substantially similar as in North Dakota.
4. The candidate has filed with the board an official application for licensure by reciprocity, a copy of the diploma from an approved naturopathic medical school, a copy of the current valid license, and the required initial licensure fee.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-07

50-06-01-05. Photograph.

An unmounted passport photograph of the applicant must be provided with the application. The photograph must have been taken within one year of the date of application.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-05

50-06-01-06. Examination requirements.

1. Those applicants for licensure who have obtained a passing score on the naturopathic physicians licensing examinations (NPLEX) part one and part two or its successor must be deemed to have met the examination requirement specified in North Dakota Century Code section 43-58-05.
2. The examination requirements for licensure must be successfully completed within four years from graduation. The board may grant an exception to this requirement for applicants who have concurrently pursued another graduate degree, and the applicant presents a verifiable, rational, and compelling explanation for not meeting the four-year time limit.
3. An applicant is permitted a maximum of three attempts to pass each part or component of the national board examination. Upon review of an individual applicant, the board may allow an exception to this rule if it finds it is in the best interest of the state and the applicant shows a documented disability as determined by the board, or the applicant:
 - a. Is validly licensed as a naturopath in another state;
 - b. Has practiced a minimum of five years; and
 - c. Has no disciplinary actions imposed by any other state licensing board.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-05

50-06-01-07. License issued.

When the board determines any candidate has successfully completed all requirements by law and rule for licensure, the board shall issue to such candidate a license to practice naturopathy.

An officer of the board and the board's executive director or deputy executive director may issue a provisional temporary license to an applicant who is seeking a permanent North Dakota naturopathic license if in their judgement the applicant meets all the requirements for a license. A provisional temporary license is valid from the date of issue until the time of the next regularly scheduled meeting of the board.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-05, 43-58-07

50-06-01-08. Change of location - License displayed.

Each licensed naturopath shall maintain a permanent electronic mail or mailing address with the board to which all communications from the board to the licensee will be sent. A licensee who changes an address shall notify the board in writing of the new contact information within thirty days. A current certificate or duplicate certificate issued by the board must be displayed at all times in each office location of the naturopath.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

50-06-01-09. License renewal.

1. Every naturopath who has been licensed by the board shall renew the license by remitting a renewal fee on or before December thirty-first of each odd-numbered year and completing the renewal application provided by the board. For applicants who receive an initial license after July first in an odd-numbered year, the license will be deemed to be automatically renewed on December thirty-first for an additional two years without payment of an additional renewal fee.
2. The applicant for renewal shall certify on the renewal application that the continuing education requirements have been or will be met by December thirty-first. The applicant must keep records of completed continuing education. The board shall conduct random compliance audits of licensees. Failure to complete continuing education is considered unprofessional conduct.
3. A license renewal application received on or after January first of an even-numbered year is an expired renewal and requires the renewal fee plus a late fee set by the board. Proof of appropriate continuing education hours must be presented. A license that has not been renewed within two years of expiration is a lapsed license requiring submission of a new application for licensure.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

50-06-01-10. Expired licenses.

Once a license has expired, the individual who held the license may not practice naturopathic medicine or use a title reserved under state law for individuals who are licensed by the board until the license is renewed or a new license is issued. An individual whose license has expired but who continues to practice naturopathic medicine or use a restricted title violates state law and this chapter.

Such a violation may be considered grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03, 43-58-03.1, 43-58-11

50-06-01-11. Fees.

The board charges the following nonrefundable fees:

1. **Initial license.** The fee for application and an initial license is four hundred dollars. The licensing period is biennial, ending on December thirty-first every odd-numbered year.
2. **Renewal.** Licenses renew on December thirty-first every odd-numbered year. The renewal fee is four hundred dollars.
3. **Late filing.** A naturopath seeking to renew a license who has failed to complete the renewal process within two years from the expiration date must be assessed a late fee of five hundred dollars in addition to the renewal fee and such other penalties as are authorized by law, if that naturopath is found to have been practicing in this state after the naturopath's license expired. A naturopath with an expired license who has not practiced without a license may renew their license within two years of the expiration date upon payment of the four hundred dollars renewal fee.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1, 43-58-05

50-06-01-12. Administrative sanction.

An administrative sanction must be imposed in the amount of five hundred dollars for any applicant or licensed naturopath who provides false or deceptive information with regard to any material fact concerning eligibility for initial licensure or renewal after verifying or certifying that the information provided is true. This includes all material information provided in an initial license application, renewal, or report of compliance with mandatory continuing education requirements.

The imposition of the administrative sanction under this section is not disciplinary action of the board; however, it does not preclude the board from also imposing disciplinary action, or other penalties provided by law, for the same conduct in appropriate cases.

An applicant or licensed naturopath may challenge the imposition of an administrative sanction under this section under North Dakota Century Code chapter 28-32.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1, 43-58-05

CHAPTER 50-06-02
AUTHORITY OF NATUROPATHS

Section

<u>50-06-02-01</u>	<u>Rights and Privileges</u>
<u>50-06-02-02</u>	<u>Signing Death Certificates</u>
<u>50-06-02-03</u>	<u>Advertising</u>
<u>50-06-02-04</u>	<u>Authority to Administer, Prescribe, and Dispense</u>
<u>50-06-02-05</u>	<u>Intradermal, Intramuscular, Intravenous, and Subcutaneous Administration</u>
<u>50-06-02-06</u>	<u>Endorsement for Prescriptive Authority</u>
<u>50-06-02-07</u>	<u>Supervising Physician for License Endorsement for Prescriptions</u>
<u>50-06-02-08</u>	<u>Formulary</u>

50-06-02-01. Rights and privileges.

Unless otherwise limited by statute, naturopaths are entitled to all rights and privileges of physicians in this state recognized under North Dakota Century Code section 43-58-09.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-08, 43-58-09, 43-58-10

50-06-02-02. Signing death certificates.

In case of the death of any patient, the naturopath shall fill out and sign such certificate of death as is required by statute.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-09

50-06-02-03. Advertising.

Naturopaths may advertise their practice in any legitimate manner set forth in the code of ethics adopted by the board, except as limited or prohibited by statute.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

50-06-02-04. Authority to administer, prescribe, and dispense.

The practice of naturopath medicine includes the administration, prescription, dispensing, ordering, or performing of:

1. Food, vitamins, minerals, nutritional supplements, digestive enzymes, botanical medicine, and homeopathic remedies.
2. Health care counseling, nutritional counseling and dietary therapy, hydrotherapy, and naturopathic physical applications and therapeutic devices. Naturopathic physical application does not include manipulation of the spine. Naturopathic physical application does include osseous manipulation of the extremities, ribs, and pelvis.
3. Nondrug prescription devices.
4. Nonprescription topical drugs.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-08

50-06-02-05. Intradermal, intramuscular, intravenous, and subcutaneous administration.

1. A naturopath may not perform any intra-articular injection or intraspinal injection.
2. A naturopath may prepare and administer for immediate use vitamins, minerals, amino acids, and homeopathic remedies in accordance with naturopathic medical training through intradermal, intramuscular, or subcutaneous injection, or, if the naturopath holds the required endorsement, through intravenous therapy. Any injectable therapies must be prepared in accordance with USP 797 standards for immediate use. Substances administered by injection or intravenous therapy must be manufactured and supplied by a manufacturer or outsourcing facility required to register with the United States food and drug administration or compounded pursuant to a prescription by a pharmacy licensed by the board of pharmacy.
3. A naturopath may use intravenous therapy only after the naturopath has obtained an endorsement from the board to perform intravenous therapy by submitting a completed application with an attestation of training to the board. The training must be at least sixteen hours of instruction. At least eight hours of instruction must be from a graduate-level course through an approved naturopathic medical school. Instruction must include:
 - a. Indications;
 - b. Contraindications;
 - c. Formularies;
 - d. Emergency protocols;
 - e. Osmolarity calculation;
 - f. Aseptic technique; and
 - g. Proper documentation.
4. A naturopath shall retain documentation of intravenous training for at least five years from attestation date.
5. Intravenous chelation therapy is limited to use for heavy metal toxicity.
6. A naturopath who uses injection or intravenous therapy shall have a plan to manage adverse events, including sensitivity, allergy, overdose, or other unintended reactions.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-08

50-06-02-06. Endorsement for prescriptive authority.

A licensed naturopath may not prescribe medications pursuant to the formulary adopted under section 50-06-02-08 unless the licensed naturopath first obtains an endorsement under this section and approval by the board.

1. **Limited endorsement.** To be eligible to prescribe, a licensed naturopath shall first obtain a limited endorsement by submitting an application to the board and entering into a written

collaborative agreement with a supervising physician who meets the requirements of section 50-06-02-07.

2. **Endorsement to practice independently.** After completing the requirements of subsection 1, the naturopath may submit an application to prescribe independently by showing successful passage of the naturopathic physicians licensing examination (NPLEX) with the test results sent directly to the board by the North American board of naturopathic examiners (NABNE). The supervising physician shall provide proof and verification attesting to the naturopath's safe prescribing practices sent directly to the board.
3. **Waiver of limited endorsement.** The requirements of subsections 1 and 2 may be waived if the naturopath shows substantial experience in prescribing medications under the laws and rules of another jurisdiction that has standards and qualifications for a licensed naturopath to prescribe medications at least equal to those required under North Dakota Century Code chapter 43-58. The naturopath shall apply for the waiver by submitting an application with the board, providing a copy of the written collaborative agreement previously entered with a supervising physician from the other jurisdiction, and providing a copy of the laws and rules of the other jurisdiction showing equal requirements. The application will be reviewed by the board at its next available regular meeting.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-08.1

50-06-02-07. Supervising physician for license endorsement for prescriptions.

The supervising physician for a naturopath's limited endorsement for prescriptive authority shall possess an active, unencumbered physician license issued under North Dakota Century Code chapter 43-17 and must have been prescribing and administering prescription drugs without limitation for at least five years immediately preceding the application. The supervising physician shall provide objective and independent review of the naturopath's first one hundred prescriptions issued by the naturopath or twelve months of prescribing, whichever occurs first. The supervising physician shall evaluate the naturopath's ability to safely prescribe and administer prescription drugs within the naturopath's scope of practice, education, training, and the naturopath's compliance with federal and state laws and regulations. The naturopath shall keep a duplicate of all prescriptions written to be reviewed at least monthly with the supervising physician.

The naturopath and supervising physician shall have a formal written agreement. The agreement must address the requirements of this rule. A copy of the fully executed agreement must be filed with the board along with the application for limited endorsement pursuant to North Dakota Century Code section 43-58-08.1.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-08.1

50-06-02-08. Formulary.

1. A naturopath may only prescribe drugs pursuant to this formulary after obtaining an endorsement for prescriptive authority under section 50-06-02-06.
2. A naturopath may not recommend altering or discontinuing a drug that is not within the naturopath's scope of practice and prescriptive authority that may be prescribed under this formulary. The naturopath instead shall refer the patient to their primary provider or prescribing provider.

3. The formulary for naturopaths with an endorsement for prescriptive authority consists of noncontrolled legend drugs and testosterone deemed appropriate for the primary health care of patients within the scope of practice and training of each naturopath. Prescribing pursuant to the formulary must be in accordance with the standard of care provided by the naturopath's training, experience, and the degree of expertise.
4. The use of all drugs must be supported by FDA label, compendia, expert opinion, or clinical practice guidelines. Compendia supported use is defined as recommended with evidence favoring efficacy in the American Hospital Formulary Service Drug Information; United States Pharmacopeia-Drug Information, or the DRUGDEX information system.
5. The following formulary references the United States Pharmacopeia (USP) drug classification system.
6. Unless otherwise indicated in the formulary, drugs specified in the formulary that are allowed to be prescribed include all forms of the drug including time release forms and other generic forms.
7. A naturopath who obtains an endorsement for prescriptive authority under section 50-06-02-06 may prescribe the following drugs or classes of drugs, and may only prescribe for use within the corresponding category and indication:

Category/Indication	Drugs or Classes of Drugs that May be Prescribed with Prescriptive Endorsement	Application and Other Limitations
<u>Analgesics</u>	<u>All drugs within the NSAID class may be prescribed.</u>	
<u>Anesthetics</u>	<u>All drugs within the local anesthetics class may be prescribed.</u>	
<u>Antiaddiction/Substance abuse treatment agents</u>	<u>Naltrexone</u> <u>Nicotine</u>	
<u>Antibacterials</u>	<u>Neomycin</u> <u>Gentamicin (topical only)</u> <u>Tobramycin (topical only)</u> <u>Amoxicillin</u> <u>Amoxicillin/Clavulanate potassium</u> <u>Penicillin G</u> <u>Doxycycline</u>	<u>May not administer any drugs in this category via intravenous administration.</u>
	<u>Clarithromycin</u> <u>Clindamycin (topical only)</u> <u>Nitrofurantoin</u> <u>Metronidazole</u> <u>Acetic acid</u>	

	<u>Polymyxin B sulfate</u> <u>Rifaximin</u>	
<u>Antiemetics</u>	<u>Ondansetron</u> <u>Diphenhydramine hydrochloride</u> <u>Hydroxyzine hydrochloride</u> <u>Meclizine hydrochloride</u> <u>Metoclopramide hydrochloride</u> <u>Scopolamine</u>	
<u>Antifungals</u>	<u>Terbinafine (topical only)</u> <u>Miconazole nitrate (topical only)</u> <u>Ketoconazole (topical only)</u> <u>Terconazole (topical only)</u> <u>Fluconazole</u> <u>Nystatin</u>	
<u>Antigout agents</u>	<u>Probenecid</u> <u>Allopurinol</u> <u>Colchicine</u>	
<u>Antimigraine agents</u>	<u>Propranolol hydrochloride</u>	
<u>Antineoplastics</u>	<u>Anastrozole</u> <u>Alitretinoin</u> <u>Tretinoin</u>	<u>Topical only</u> <u>All drugs may only be prescribed for noncancer purposes and uses.</u>
<u>Antiobesity agents</u>	<u>Orlistat</u>	
<u>Antiparasitics</u>	<u>Albendazole</u> <u>Ivermectin</u> <u>Mebendazole</u>	<u>Topical only</u>
<u>Antispasticity agents</u>	<u>Baclofen</u> <u>Tizanidine hydrochloride</u>	
<u>Antivirals</u>	<u>Acyclovir</u> <u>Valacyclovir</u> <u>Oseltamivir</u>	
<u>Anxiolytics</u>	<u>Buspirone</u> <u>Hydroxyzine</u>	
<u>Blood glucoses</u>	<u>All drugs within the antidiabetic agents and</u>	

<u>regulators</u>	<u>glycemic agents class may be prescribed.</u> <u>All drugs within the biguanide and DPP 4 inhibitors group may be prescribed.</u>	
<u>Blood products and modifiers</u>	<u>Aspirin</u> <u>Heparin sodium (for nontherapeutic blood thinning only)</u>	<u>Not allowed to do blood transfusions.</u>
<u>Cardiovascular agents</u>	<u>All drugs within the following classes may be prescribed:</u> <ul style="list-style-type: none"> • <u>Alpha-adrenergic agonists;</u> • <u>Alpha-adrenergic blocking agents;</u> • <u>Angiotensin II receptor antagonists;</u> • <u>Angiotensin-converting enzyme (ACE) inhibitors;</u> • <u>Calcium channel blocking agents - Dihydropyridines and nondihydropyridines;</u> • <u>Loop diuretics;</u> • <u>Potassium-sparing diuretics;</u> • <u>Thiazide diuretics;</u> • <u>Dyslipidemics - Fibric acid derivatives, HMG CoA reductase inhibitors, and PCSK9 inhibitors.</u> 	<u>Beta adrenergics medications are limited to 100 mg.</u> <u>Nondihydropyridines medications are limited to 120 mg.</u>
<u>Central nervous system agents</u>	<u>Clonidine hydrochloride</u>	
<u>Contraceptives</u>	<u>All drugs within the oral contraceptives combinations and oral progestins classes may be prescribed.</u> <u>Citric acid/Lactic acid/Potassium bitartate</u> <u>Ethinyl estradiol/Etonogestrel</u> <u>Ethyinyl estradiol/Norelgestromin</u> <u>Levonorgestrel</u>	<u>May not prescribe any drug within this category that would require a procedure such as implantable contraceptives.</u>
<u>Dental and oral agents</u>	<u>Doxycycline hyclate</u> <u>Minocycline hyclate</u> <u>Prilocaine hydrochloride</u> <u>Triamcinolone acetonide</u>	
<u>Dermatological agents</u>	<u>All drugs within this category may be prescribed.</u>	<u>Topical only except can allow triamcinolone injection.</u>

<u>Electrolytes - Minerals - Metals - Vitamins</u>	<u>All drugs within this category may be prescribed.</u>	
<u>Gastrointestinal agents</u>	<u>All drugs within the following classes may be prescribed:</u> <ul style="list-style-type: none"> • <u>Anticonstipation agents;</u> • <u>Antidiarrheal agents;</u> • <u>Antispasmodics, gastrointestinal;</u> • <u>Histamine receptor antagonists;</u> • <u>Protectants;</u> • <u>Proton pump inhibitors.</u> <u>Metoclopramide hydrochloride</u> <u>Rifaximin</u> <u>Ursodiol</u> <u>Cholic acid</u> <u>Betaine</u> <u>Betaine hydrochloride</u> <u>Cromolyn sodium</u> <u>Amoxicillin/Clarithromycin/Omeprazole</u>	
<u>Genitourinary agents</u>	<u>All drugs within this category may be prescribed.</u>	
<u>Hormonal agents: stimulant, replacement, modifying (adrenal)</u>	<u>Hydrocortisone (dose limit: 30 mg daily)</u> <u>Prednisone (dose limit: 5 mg daily)</u> <u>Methylprednisolone acetate (burst dose pack - dose limit of 1 pack per 60 days)</u> <u>Triamcinolone acetonide</u>	
<u>Hormonal agents: stimulant, replacement, modifying (sex hormones, modifies)</u>	<u>Testosterone (no more than 400 mg/month)</u> <u>All drugs within the androgens and progestins classes may be prescribed.</u>	
	<u>All drugs within the estrogens class may only be prescribed as topical and vaginal HRT. Exception for oral estrogens prescribed for purposes of contraception.</u> <u>Estradiol/Levonorgestrel</u> <u>Estradiol/Norethindrone acetate</u>	

	<u>Estradiol/Norgestimate</u> <u>Estradiol/Progesterone</u>	
<u>Hormonal agents: stimulant, replacement, modifying (thyroid)</u>	<u>All drugs within this category may be prescribed.</u>	
<u>Immunological agents</u>	<u>All drugs within the vaccines class may be prescribed.</u> <u>All drugs within the other immunological agents - Allergen specific immunotherapy group may be prescribed.</u>	
<u>Inflammatory bowel disease agents</u>	<u>Hydrocortisone</u> <u>Prednisone</u>	
<u>Metabolic bone disease agents</u>	<u>Alendronate</u> <u>Ibandronate</u> <u>Cholecalciferol</u> <u>Calcitriol</u> <u>Doxercalciferol</u> <u>Paricalcitol</u>	
<u>Ophthalmic agents</u>	<u>All drugs within antiallergy agents class may be prescribed.</u> <u>All drugs within the anti-infectives class may be prescribed (topical only).</u> <u>Diclofenac sodium</u> <u>Ketorolac tromethamine</u> <u>Nepafenac</u> <u>Bacitracin zinc/Hydrocortisone acetate/Neomycin sulfate/Polymyxin B sulfate</u> <u>Bacitracin zinc/Hydrocortisone acetate/Polymyxin B sulfate</u> <u>Hydrocortisone acetate/Neomycin sulfate/Polymyxin B sulfate</u> <u>Ciprofloxacin (topical only)</u>	
<u>Otic agents</u>	<u>All drugs within this category may be prescribed.</u>	<u>Topical use only</u>
<u>Respiratory tract/ Pulmonary agents</u>	<u>All drugs within the following classes may be prescribed:</u> <ul style="list-style-type: none">• <u>Antihistamines;</u>• <u>Anti-inflammatories - Inhaled</u>	

	<u>corticosteroids;</u> <ul style="list-style-type: none"> • <u>Antileukotrienes;</u> • <u>Anticholinergic bronchodilators;</u> • <u>Sympathomimetic bronchodilators;</u> • <u>Combination bronchodilators;</u> • <u>Cold-cough; and</u> • <u>Mast cell stabilizers.</u> <u>Acetylcysteine</u>	
<u>Sexual disorder agents</u>	<u>All drugs within the sexual disorder agents (male) class may be prescribed.</u>	
<u>Skeletal muscle relaxants</u>	<u>Cyclobenzaprine hydrochloride</u>	

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-08(3)(c)

CHAPTER 50-06-03
CONTINUING NATUROPATHIC EDUCATION

Section

<u>50-06-03-01</u>	<u>Requirements</u>
<u>50-06-03-02</u>	<u>Exceptions</u>
<u>50-06-03-03</u>	<u>Board Approval</u>
<u>50-06-03-04</u>	<u>Board Audit</u>

50-06-03-01. Requirements.

All active licensees shall complete:

1. A minimum of forty hours of approved continuing naturopathic education (CNE) credits biennially. Only hours earned at board-approved continuing naturopathic education programs are acceptable. One hour of credit is earned for every fifty minutes of approved continuing education.
2. Five of the forty hours of approved continuing naturopathic education credits must be topics on pharmacology.
3. An extension of time or other waiver to complete the hours required in this section must be granted upon written application if the licensee failed to meet the requirements due to illness, military service, medical or religious missionary activity, or other extenuating circumstance.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1, 43-58-08.1

50-06-03-02. Exceptions.

The following naturopaths are not required to meet the requirements of this chapter:

1. A naturopath who is enrolled in a full-time graduate naturopathic medical education program (residency or fellowship).
2. A naturopath who holds a provisional temporary license or a naturopath who has not renewed the naturopath's licenses for the first time since being granted a regular permanent license by the board.
3. A naturopath who has retired from the active practice of medicine. This exception is available only to a retired naturopath who has completely and totally withdrawn from the practice of naturopathic medicine. Any naturopath seeking to be excused from completing continuing naturopathic education requirements under this subsection shall submit an affidavit to the board, on the board's form, certifying that the naturopath may not render naturopathic medical services during the term of the next continuing naturopathic education reporting period.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

50-06-03-03. Board approval.

1. To receive board approval, a continuing naturopathic education (CNE) program must be one of the following:

- a. A program sponsored by the board;
 - b. A program sponsored by an approved naturopathic medical school;
 - c. A health-related seminar sponsored by a college or university accredited by an organization recognized by the United States department of education;
 - d. A health-related seminar qualifying for continuing education credits through the state board of medical examiners, the state board of chiropractic examiners, or the state board of nursing; or
 - e. An educational program arranged by the North Dakota association of naturopathic doctors or the American association of naturopathic physicians or one of its affiliates and approved by the board.
2. To have a program approved, the sponsor shall submit to the board the following information in addition to any other information requested by the board:
 - a. A detailed course outline or syllabus, including such items as the method of instruction and the testing materials.
 - b. The qualifications and subjects taught by each instructor appearing in the program.
 - c. The procedure to be used for recording attendance of attendees seeking to apply for continuing naturopathic education credit.
 3. The board shall be the sole determinant of whether the courses are approved for continuing naturopathic education credit. The board shall make that determination based on the information submitted to it. In making its decision, the board shall determine whether the course submitted for credit meets the basic goals of continuing naturopathic education. Those basic goals include the growth of knowledge, the cultivation of skills and greater understanding, the continual striving for excellence in naturopathic care, and the improvement of health and welfare of the public.
 4. Except for continuing naturopathic education credits for a program sponsored by the board, it is the responsibility of the licensee to verify the appropriate credit designation with the source of the program, not with the board. All licensees are encouraged to verify eligibility for continuing naturopathic credit and the appropriate credit designation before taking any particular course.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

50-06-03-04. Board audit.

Each biennium the board shall audit randomly selected naturopaths to monitor compliance with the continuing education requirements. Any naturopath so audited shall be required to furnish documentation of compliance, including the name of the accredited continuing naturopathic education provider, name of the program, hours of continuing education completed, dates of attendance, and verification of attendance. Any naturopath who fails to provide verification of compliance with the continuing naturopathic education requirements is subject to revocation of licensure. To facilitate the board's audits, every naturopath is required to maintain a record of all continuing naturopathic education activities in which the naturopath has participated. Every naturopath shall maintain those records for a period of at least two years following the time when those continuing naturopathic education activities were reported to the board.

History: Effective April 1, 2024.

General Authority: NDCC 43-58-03.1

Law Implemented: NDCC 43-58-03.1

TITLE 54
BOARD OF NURSING

APRIL 2024

CHAPTER 54-01-03

54-01-03-01. Definitions.

The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-12.1 and apply to North Dakota Administrative Code title 54 unless the context indicates otherwise.

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.
2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.
3. "Accreditation" means the official authorization or status granted by a nationally recognized agency other than a state board of nursing.
4. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care, shaving, dressing, oral care, and supporting a safe and healthy environment.
5. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.
6. "Advanced assessment" means the collection of the history, physical and psychological assessment data of a client's signs, symptoms, pathophysiologic status, and psychosocial variation in the determination of differential diagnoses and treatment by the advanced practice registered nurse.
7. "Applicant" means an individual seeking official action by the board.
8. "Approved" means that the standards established by the board are met.
9. "Assign" means a licensed nurse designates the responsibility for performance of nursing interventions to another licensed nurse.
10. "Assignment" means the distribution of work that each staff member is to accomplish.
11. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting"

include opening the medication container or reminding the client of the proper time to take the medication. Assisting with the administration of medication may be a delegated intervention.

12. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
13. "Certification" means a process of voluntary recognition by a national nursing organization or other entity of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty areas or scope of practice and is developed in accordance with generally accepted standards of validity and reliability.
14. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.
15. "Clinical learning experiences" means the planned, faculty-guided learning experiences that involve direct or indirect contact with clients.
16. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.
17. "Compliance" means the act of adhering to or conforming to the terms, conditions, or restrictions specified in a consent agreement by the alternative to discipline program or disciplinary order by the board.
18. "Comprehensive nursing assessment" means analysis and synthesis of data collected by a registered nurse, which is used to establish a health status baseline, establish a plan of care, and address changes in a client's condition.
- ~~18.~~19. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the facility or agency but is not individually responsible to direct the plan of care for the client.
- ~~19.~~20. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.
- ~~20.~~21. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set forth in North Dakota Century Code chapter 19-03.1 and any other drugs required by law to be monitored by the prescription drug monitoring program.
- ~~21.~~22. "Criminal history record information" shall have the same meaning as ~~the phrase is~~ defined in North Dakota Century Code section 12-60-16.1.
- ~~22.~~23. "Delegation" means the authorization for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person.
- ~~23.~~24. "Denial" means the board's refusal to issue or renew a current license or registration.
- ~~24.~~25. "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.

- | ~~25-26.~~ "Distance nursing education program" means a program that is approved by the board of nursing of the jurisdiction in which the program is headquartered, and is equivalent to an "instate nursing program".
- | ~~26-27.~~ "Diversion" means illegal use, distribution, or abuse of controlled substances or use of prescription drugs for purposes not intended by the prescriber.
- | ~~27-28.~~ "Emergency suspension" means action by the board when there are reasonable grounds to believe the licensee, registrant, applicant, or any individual with authority to practice nursing under any privilege has violated a statute or rule the board is empowered to enforce and continued practice would constitute a continuing and imminent threat to the public welfare.
- | ~~28-29.~~ "Encumber" means to place on probation.
- | ~~29-30.~~ "Evidence-based practice" means integration of research findings with clinical expertise and client values for optimum care.
- | ~~30-31.~~ "Focused nursing assessment" means the collection and recording of baseline assessment data by a licensed practical nurse, which is used to observe, monitor, and report signs, symptoms, and changes in client condition in an ongoing manner. The licensed practical nurse reports to the supervising registered nurse or licensed practitioner.
- | ~~31-32.~~ "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs, psychiatric or physical disorders, or practice deficiencies.
- | ~~32-33.~~ "Inactive license or registration" means a license or registration which is not renewed.
- | ~~33-34.~~ "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.
- | ~~34-35.~~ "Instate nursing program", "nursing program", or "nursing education program" means a nurse program with faculty or facilities located in North Dakota and approved by the board.
- | ~~35-36.~~ "Interdisciplinary team" means a group of health care professionals currently licensed under North Dakota Century Code title 43.
- | ~~36-37.~~ "Internationally educated" means educated outside the United States.
- | ~~37-38.~~ "Jurisdiction" means a ~~province,~~ state, ~~or territory,~~ or country that administers the national council licensure examination for the purpose of licensure.
- | ~~38-39.~~ "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.
- | ~~39-40.~~ "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
- | ~~40-41.~~ "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.
- | ~~41-42.~~ "Licensure" means the process by which the board grants legal authority privilege to an individual to engage in the practice of nursing as a licensed practical nurse, registered nurse, advanced practice registered nurse, or specialty practice registered nurse upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.
- | ~~42-43.~~ "Limit" means to restrict, qualify, or otherwise modify the license or registration.

- ~~43.44.~~ "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.
- ~~44.45.~~ "Medication administration" means the delivery of medication by a licensed nurse or an individual delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
- ~~45.46.~~ "Medication assistant III" means an individual who has a current registration as an unlicensed assistive person, has had additional training in administration of medication, and possesses a current registration from the board.
- ~~46.47.~~ "Medical assistant student" means an individual who is currently enrolled in an approved medical assistant program.
- ~~47.48.~~ "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.
- ~~48.49.~~ "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, taking, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.
- ~~49.50.~~ "NCLEX-PN®" means the national council licensure examination for practical nurses.
- ~~50.51.~~ "NCLEX-RN®" means the national council licensure examination for registered nurses.
- ~~51.52.~~ "Neglect" means a disregard for and departure from the standards of care which has or could have resulted in harm to the client.
53. "Noncompliance" means the failure to adhere to the terms, conditions, or restrictions specified in an alternative to discipline consent agreement or disciplinary order by the board.
- ~~52.54.~~ "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.
- ~~53.55.~~ "Nurse faculty" means individuals employed by an academic institution who are responsible for developing, implementing, teaching, evaluating, and updating nursing program curricula.
- ~~54.56.~~ "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care which may include activities of daily living.
57. "Participant" means a nurse who has voluntarily agreed to enter an agreement with the alternative to discipline program or a licensee or registrant who is encumbered through a disciplinary order by the board.
- ~~55.58.~~ "Practice deficiency" means a practice activity that does not meet the standards of nursing practice.
- ~~56.59.~~ "Practice site" means a facility that signs a written agreement with the nursing education program to provide practice experiences for students.
- ~~57.60.~~ "Preceptor" means an individual at or above the level of licensure that an assigned student is seeking who may serve as a teacher, mentor, role model, or supervisor for the assigned student in a clinical setting.

- ~~58.61.~~ "Prelicensure program" means a board-approved program of study that meets the requirements for nursing licensure.
- ~~59.62.~~ "Probation" means restrictions, requirements, or limitations placed against a licensee or registrant through monitoring for a prescribed period of time.
- ~~60.63.~~ "Professional-boundary crossing" means a deviation from an appropriate boundary for a specific therapeutic purpose with a return to establish limits of the professional relationship.
- ~~61.64.~~ "Professional-boundary violation" means a failure of a licensee or registrant to maintain appropriate boundaries with a client, client family member, or other health care provider.
- ~~62.65.~~ "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's family personal relationships.
- ~~63.66.~~ "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
- ~~64.67.~~ "Reactivation" means issuance of a previously active license or registration in the absence of disciplinary action.
- ~~65.68.~~ "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.
- ~~66.69.~~ "Reinstatement" means activation of a board-sanctioned license or registration from a surrendered, suspended, or revoked status.
- ~~67.70.~~ "Reissuance" means issuance of a license from probationary status to full licensure status.
- ~~68.71.~~ "Relicensure" means renewal, reinstatement, ~~reactivation~~reactivation, or reissuance of a license or registration.
- ~~69.72.~~ "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.
- ~~70.73.~~ "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.
- ~~71.74.~~ "Scope of practice" means the delineation of the nature and extent of practice.
- ~~72.75.~~ "Sponsor institution" means the governing organization that provides necessary administrative and fiscal resources for a nursing program.
- ~~73.76.~~ "Stable" means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.
- ~~74.77.~~ "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.
- ~~75.78.~~ "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of

the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.

- a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.
- b. "Direct supervision" means that the responsible licensed nurse or licensed practitioner is physically present in the client care area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed nurse or licensed practitioner must be in the same room or "looking over the shoulder" of the persons providing nursing care.
- c. "Indirect supervision" means that the responsible licensed nurse or licensed practitioner is available through periodic inspection and evaluation or by telecommunication, or both, for direction, consultation, and collaboration.

| ~~76-79.~~ "Surrender" means an agreement by a licensee or registrant, approved by the board, to relinquish the license or registration to the board.

| ~~77-80.~~ "Survey" means an onsite visit or a paper review of a program approved by the board of nursing.

| ~~78-81.~~ "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.

| ~~79-82.~~ "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.

| ~~80-83.~~ "Temporary permit" means the authority to practice nursing for a limited time period.

| ~~81-84.~~ "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.

| ~~82-85.~~ "Work authorization" means the issuance of an authorization to practice nursing between the dates of graduation and notification of the results of the licensure examination.

| **History:** Effective June 1, 2002; amended effective April 1, 2004; August 1, 2005; July 1, 2008; April 1, 2011; October 1, 2011; April 1, 2014; October 1, 2016; [April 1, 2024](#).

| **General Authority:** NDCC 43-12.1-08(2)

| **Law Implemented:** NDCC 43-12.1-08

CHAPTER 54-02-01 LICENSURE BY EXAMINATION

Section

54-02-01-01	Official Licensing Examination
54-02-01-02	Passing Score [Repealed]
54-02-01-03	Testing Dates [Repealed]
54-02-01-04	Examination Material [Repealed]
54-02-01-04.1	Board Authorization to Write Examination
54-02-01-05	Examination Results
54-02-01-06	Examination Fees
54-02-01-07	Transcript
54-02-01-08	Employment Verification [Repealed]
54-02-01-09	Internationally Educated Applicants <u>[Repealed]</u>
54-02-01-10	Employment of Unsuccessful Candidates
54-02-01-11	Qualifications for Admission to the Licensing Examination [Repealed]
54-02-01-12	Early Admission to the Licensing Examination [Repealed]
54-02-01-13	Authorization to Practice Nursing
54-02-01-14	Recognition of Programs From Other Jurisdictions

54-02-01-07. Transcript.

1. A graduate from another state or territory or an English-speaking Canadian nursing education program must provide an official completed transcript. The transcript must be sent directly from the nursing education program to the board office, as proof of satisfactory completion of the appropriate nursing education program.
2. ~~Internationally educated applicants from an international nursing education program, except for English-speaking Canadian programs, may be requested to provide an English translated evaluation of the full nursing education program academic record from a board-recognized national credential's evaluation service~~A board-approved credentials evaluation service shall evaluate an internationally educated applicant's official nursing education program transcript.
 - a. The transcript must be sent directly from the nursing program to the credentials evaluation service.
 - b. The evaluation must be translated to English and the nursing education program's approval in the home country must be verified and must include a course-by-course evaluation to assure the nursing education program meets those requirements outlined in article 54-03.2.
 - c. The nursing education program must include a clinical education equivalent in amount and time to board-approved programs.
 - d. The approved credentials evaluation service shall complete and send directly to the board the full credentials evaluation and official transcript that was evaluated.
 - e. The credentials evaluation must state specifically the language of instruction was English with English textbooks. If the nursing education program was not taught in English, evidence of the applicant's English language proficiency must be provided to the board.
 - f. This subsection does not apply to graduates of Canadian English-speaking nursing education programs.

History: Amended effective June 1, 1982; January 1, 1994; February 1, 1998; April 1, 2004; April 1, 2014; April 1, 2024.

General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09(2)

54-02-01-09. Internationally educated applicants.

Repealed effective April 1, 2024.

~~—A certificate issued by a credentials evaluation service approved by the board shall be required of any international graduate, except for graduates of English-speaking Canadian programs, for admission to the national council licensure examination. Eligible international graduates will be issued an authorization to practice nursing when declared eligible for licensure by examination and upon written verification of nursing employment in a North Dakota health care facility.~~

~~**History:** Effective November 1, 1979; amended effective June 1, 1982; February 1, 1998; April 1, 2004; July 1, 2008; April 1, 2014.~~

~~**General Authority:** NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09(2)~~

CHAPTER 54-02-06 LICENSE BY ENDORSEMENT

Section

54-02-06-01	Application and Fee
54-02-06-01.1	Temporary Permit
54-02-06-02	Fee Nonrefundable
54-02-06-03	Exceptions [Repealed]
54-02-06-03.1	Military Spouses - Licensure <u>[Repealed]</u>
54-02-06-03.2	Military Spouses - Temporary Permit <u>[Repealed]</u>

54-02-06-01. Application and fee.

1. Applicants licensed as a nurse by examination in another jurisdiction may apply for license by endorsement and must meet board requirements, including submission of:
 - ~~1.~~ a. A completed application;
 - ~~2.~~ b. A criminal history record check according to chapter 54-02-12;
 - ~~3.~~ c. The nonrefundable endorsement fee of one hundred fifty dollars;
 - ~~4.~~ d. Evidence of completion of a nursing education program approved in a jurisdiction which meets or exceeds those requirements outlined in article 54-03.2; and
 - ~~5.~~ e. Evidence of nursing practice to demonstrate continued competency which meets or exceeds four hundred hours within the preceding four years or as otherwise approved by the board.
2. A board-approved evaluation service shall evaluate an internationally-educated nurse's official nursing education program transcript.
 - a. The transcript must be sent directly from the nursing program to the credentials evaluation service.
 - b. The nursing education program's approval in the home country must be verified and the evaluation must include a course-by-course evaluation to assure the nursing education program meets those requirements outlined in article 54-03.2. The nursing education program must include a clinical education equivalent in amount and time to board-approved programs.
 - c. The approved credentials evaluation service shall complete and send directly to the board the full credentials evaluation and official transcript that was evaluated.
 - d. This subsection does not apply to graduates of Canadian English-speaking nursing education programs.

A licensee from another jurisdiction who has an insufficient number of practice hours must meet one of the alternative requirements of section 54-02-05-05.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011; October 1, 2012; April 1, 2014; July 1, 2020; April 1, 2024.

General Authority: NDCC 12-60-24(2)(o), 43-12.1-09(2)(b)

Law Implemented: NDCC 43-12.1-09(2)(b)

54-02-06-03.1. Military spouses - Licensure.

Repealed effective April 1, 2024.

~~Military spouse applicants will be granted a license to practice nursing upon meeting board requirements and submission of:~~

- ~~1. A completed application;~~
- ~~2. A criminal history record check according to chapter 54-02-12;~~
- ~~3. Payment of the nonrefundable endorsement fee; and~~
- ~~4. Evidence that demonstrates continued competency which must include experience in nursing for at least two of the four years preceding the date of application or otherwise approved by the board and meet the requirements in section 54-02-06-01.~~

~~The military spouse who does not meet the practice requirements outlined above may apply for section 54-02-06-01.~~

~~**History:** Effective April 1, 2014.~~

~~**General Authority:** NDCC 43-12.1-08~~

~~**Law Implemented:** NDCC 43-51-11.1~~

54-02-06-03.2. Military spouses - Temporary permit.

Repealed effective April 1, 2024.

~~Refer to section 54-02-06-01.1.~~

~~**History:** Effective April 1, 2014.~~

~~**General Authority:** NDCC 43-12.1-08~~

~~**Law Implemented:** NDCC 43-51-11.1~~

ARTICLE 54-10
ALTERNATIVE TO DISCIPLINE PROGRAM

Chapter
54-10-01 Alternative to Discipline Program

CHAPTER 54-10-01
ALTERNATIVE TO DISCIPLINE PROGRAM

Section
54-10-01-01 Organization
54-10-01-02 Eligibility and Participation
54-10-01-03 Noncompliance

54-10-01-01. Organization.

1. The board shall employ a program coordinator to organize and administer the alternative to discipline program.
2. The program coordinator shall:
 - a. Review, evaluate, and determine eligibility of nurses who request participation in or are recommended for the alternative to discipline program;
 - b. Review and designate treatment facilities and services to which nurses in the alternative to discipline program may be referred;
 - c. Receive and review information relating to the participation of nurses in the alternative to discipline program;
 - d. Prepare reports for the board; and
 - e. Other duties as deemed necessary by the board.

History: Effective April 1, 2024.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-08

54-10-01-02. Eligibility and participation.

1. Referrals can be made for participation in the program by:
 - a. The licensed nurse themselves;
 - b. A friend or family member;
 - c. The employer;
 - d. The board of nursing; or
 - e. An alternative to discipline program or board of nursing from another state.
2. Participation in the program may not be required if the nurse remains in compliance with the nurse's contract. To ensure public safety and to facilitate monitoring unless otherwise prohibited by law, the program contract authorizes the program to communicate directly with:

- a. Current and prospective employers;
- b. Health, mental health, and treatment providers;
- c. Probation departments;
- d. Drug court agencies;
- e. Disciplinary, nondisciplinary, and regulatory agencies;
- f. Recovery community programs and support individuals;
- g. Drug test collection sites; and
- h. Third-party monitoring and drug testing services.

3. Participants shall:

- a. Be actively licensed as a nurse in North Dakota or be a nurse currently enrolled in an alternative to discipline program who is requesting endorsement from another state;
- b. Have a physical, mental, or chemical dependency condition that is affecting, or may affect their nursing practice;
- c. Agree to enter the program and provide consent voluntarily for appropriate medical, chemical dependency, or mental health evaluations;
- d. Follow all recommendations of the evaluator; and
- e. Agree to the terms set forth in the agreement.

4. Participants shall acknowledge that North Dakota is their home state for purposes of the nurse licensure compact and that during the term of the agreement their multistate licensure privilege to practice in all other party states will be deactivated until the contract is complete.

5. Participants may not practice nursing in any other state without prior written authorization from the North Dakota alternative to discipline program and the board of nursing and alternative to discipline program in the state in which the participant intends to practice.

History: Effective April 1, 2024.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-08

54-10-01-03. Noncompliance.

1. Failure to comply with the program conditions may result in termination of participation and report to the North Dakota board of nursing for investigation and consideration of disciplinary action.

2. Participants who voluntarily terminate the program or who were required to terminate due to noncompliance, who request to re-enter the program must submit evidence of a minimum period of continuous sobriety as defined by the program.

History: Effective April 1, 2024.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-08

TITLE 67.1
EDUCATION STANDARDS AND PRACTICES BOARD

APRIL 2024

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. A criminal background investigation including the bureau of criminal investigation and federal bureau of investigation must be completed prior to any student teaching experience.
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. Participation in one continuous semester of classroom teaching as authorized by section 67.1-02-01-06 must be considered a qualifying student teaching experience.
3. In the event of an emergency, the student teacher may be placed as a substitute in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days, one time, except as otherwise authorized by section 67.1-02-01-06.
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 section 67.1-02-01-06 or subdivision d of subsection 1 of section 67.1-02-02-02.
6. Student teachers may receive a stipend from the school where they have student taught.
7. A student teacher will be eligible for a forty-day provisional license upon completion of all requirements for the student teacher's bachelor's degree minus the awarding of the degree and the official transcript as documented by the institution of higher education registrar. Once the degree has been awarded and the official transcript has been received, the student teacher must complete the initial application process.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; April 1, 2006; July 1, 2008; October 1, 2020; August 9, 2023; January 1, 2024; April 1, 2024.

General Authority: NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10

TITLE 69
PUBLIC SERVICE COMMISSION

APRIL 2024

**ARTICLE 69-09
PUBLIC UTILITY DIVISION**

Chapter	
69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Pipeline Safety
69-09-04	Uniform Sign Standards - Railroad
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration
69-09-08	Renewable Electricity and Recycled Energy Tracking System
69-09-09	Wind Facility Decommissioning
69-09-10	Solar Facility Decommissioning
69-09-11	Common Pipeline Carriers
69-09-12	Resource Plans and Cybersecurity Security

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~December 1, 2021~~September 6, 2023, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards.
5. Part 194 - Response Plans for Onshore Oil Pipelines.
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.
7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020; January 1, 2021; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-09-12
RESOURCE PLANS AND ~~CYBERSECURITY~~SECURITY

Section

69-09-12-01	Definitions
69-09-12-02	Resource Plan Procedure
69-09-12-03	Resource Plan Attributes
69-09-12-04	Filing Requirements
69-09-12-05	Cybersecurity Security

69-09-12-01. Definitions.

1. "Resource plan" means a set of resource options an electric public utility plans to use to meet the electric capacity and energy requirements of the utility's customers over a planning horizon, including an explanation of the electric supply and demand circumstances when each resource option would be used to meet the capacity and energy needs in an adequate and reliable manner.
2. "Externality" means numerical costs or quantified values assigned to represent environmental costs that are not internalized in the cost of production, or the market price of electricity from a particular electric resource or the alleged costs of complying with future environmental laws or regulations that have not yet been enacted.
3. "Renewable integration cost" means the cost of measures to help meet the incremental needs of the system as more renewable energy is added to the resource mix.
4. "Unserved energy" means the amount of end-customer demand measured in megawatt-hours that cannot be supplied due to a deficiency of generation either generated or imported by the electric public utility or transmission capacity.
5. "Security" means physical security and cybersecurity.

History: Effective January 1, 2023; amended effective April 1, 2024.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-05. ~~Cybersecurity~~Security.

1. An electric public utility shall meet with the commission annually to report on ~~cybersecurity~~security preparedness.
2. The report must provide:
 - a. Information on the policies, procedure, and process used to inform the management of ~~cybersecurity~~security risk;
 - b. Information on any critical technology, constraints related to procurement, supply chain risk, impact of compromise to the supply chain, and controls to manage risk associated with dependency on external entities;
 - c. An assessment of emerging threats and efforts taken by the electric public utility to implement ~~cybersecurity~~security measures;
 - d. A description of the process used to support compliance with applicable standards, laws, regulations, and best practices;

- e. A description of the policies and protections used to ensure the security of information and operational systems and safeguard against loss of confidential information;
 - f. Information on activities to monitor, detect, and analyze information related to ~~cybersecurity~~security threats;
 - g. Information on the systems used for collaboration and communication of information and intelligence sharing;
 - h. Information on activities used to address a detected ~~cybersecurity~~security incident, contain impacts, limit potential damage, and manage consequences of a ~~cybersecurity~~security incident; ~~and~~
 - i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident;
 - j. Information or plans for asset sharing with other electric public utilities and electrical cooperatives to maintain services in the event of a security incident; and
 - k. Information on tabletop and field training exercises regarding security.
3. The commission may close the meeting to discuss the ~~cybersecurity~~security report, unless the commission orders otherwise.

History: Effective January 1, 2023; amended effective April 1, 2024.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17

TITLE 69.5
RACING COMMISSION, NORTH DAKOTA

APRIL 2024

**ARTICLE 69.5-01
NORTH DAKOTA RACING COMMISSION RULES**

Chapter	
69.5-01-01	Definitions
69.5-01-02	The Commission
69.5-01-03	Racing Officials
69.5-01-04	Permits and Requirements
69.5-01-05	Licensees
69.5-01-06	Patrons [Repealed]
69.5-01-07	Conduct of Races
69.5-01-08	Parimutuel Wagering Systems
69.5-01-09	North Dakota Breeders Fund
69.5-01-10	North Dakota Purse Fund
69.5-01-11	Simulcasting And Account Deposit Wagering
69.5-01-12	North Dakota Promotion Fund

CHAPTER 69.5-01-01

69.5-01-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 53-06.2, except:

1. "Age" means the age of a horse and shall be reckoned from the first day of January of the year of foaling.
2. "Appaloosa" means a horse registered with the appaloosa horse club.
3. "Applicable horsemen's organization" means the jockey club with respect to thoroughbred horses, the American quarter horse association with respect to quarter horses, the United States trotting association with respect to ~~standard bred~~ standardbred horses, the appaloosa horse club with respect to appaloosa horses and the American paint horse association with respect to pinto and paint horses.
4. "Arabian" means a horse registered with the international Arabian horse association, the Arabian horse registry of America, Inc., or the Anglo-Arabian horse registry.
5. "Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.
6. "Association" means an individual or business entity holding:

- a. A permit from the commission to conduct racing or pari-mutuel wagering, or both; and
 - b. An annual license authorizing the specific dates of the annual racing meeting.
7. "Association grounds" means all real property utilized by an association in the conduct of its race meeting, including the track, concessions, stands, offices, barns, stables, employee housing, and parking.
 8. "Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment of agent on a form approved by the commission filed by the owner or principal with the horsemen's bookkeeper authorizing the agent to handle matters pertaining to racing and stabling.
 9. "Bleeder" means a horse which hemorrhages from within the respiratory tract during a race or within one hour postrace, or during exercise, or within one hour of such exercise.
 10. "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.
 11. "Chemist" means any official racing individual designated by the commission and working for an accredited and licensed laboratory.
 12. "Claiming race" means a race which includes a condition that any horse starting the race may be ~~claimed and~~ purchased by any licensed owner who has started a horse at the current meeting for an amount specified in the conditions for that race by the racing secretary.
 13. "Commission" means the North Dakota racing commission.
 14. "Contractual ~~concessionaire~~ vendor" means any business or individual dealing in the furnishing, sale, or distribution of materials, supplies, or services to an association.
 15. "Day" means a twenty-four-hour period beginning at one minute after twelve a.m. and ending at twelve midnight. Also referred to as a "race day".
 16. "Dead heat" means the finish of a race by two horses or more at the same time.
 17. "Declaration" means the act of withdrawing an entered horse from a race.
 18. "Entry" means:
 - a. A horse entered for a race; or
 - b. Two or more horses entered and joined for the same race for pari-mutuel wagering purposes because of common ties of ownership, lease, or training.
 19. "Field or mutuel field" means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track totalizator. The highest numbered horse with the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.
 20. "Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration.
 21. "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by order of the stewards or the commission.
 22. "Furosemide" means 4 Chloro-N-(2 furylmethyl)-5-sulfamoy-lanthanilic acid.

23. "Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.
24. "Horse" means any horse (including and designated as a **male**mare, filly, stallion, colt, ridgling, or gelding) registered for racing under the jurisdiction of the commission and which requires a jockey to race.
25. "Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.
26. "Jockey" means a rider licensed to ride in commission-approved races.
27. "Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.
28. "Maiden" means a horse that, at the time of starting, has never won a race on the flat where racing is:
 - a. Supervised by a lawfully established racing commission or board;
 - b. Covered by the **raeing-form**Daily Racing Form or official racing publication (e.g. American quarter horse chart books, the appaloosa horse club chart books, the paint horse chart books, **United States trotting association**, and the Arabian horse chart book); or
 - c. A maiden that has been disqualified after finishing first is still a maiden.
29. "Match race" means a race between two horses, the property of two owners, on terms agreed upon by them. The match is void if either of the horses or if either owner dies prior to the running of the race. It remains a match even if money or other award is added to the stakes.
30. "Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.
31. "Minor" means any person under the age of eighteen.
32. "Month" means a calendar month.
33. "Nominator" means the person in whose name a horse is entered for a race.
34. "Official time" means the period from the time the first horse crosses the timing beam until the first horse crosses the finish line.
35. "Operating costs" includes, for purposes of subsection 6 of section 53-06.2-05 and subsection 6 of section 53-06.2-08 of the North Dakota Century Code, contributions to the breeders', purse, racing promotion, and general funds.
36. "Overnight race" means a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which the race is to be run.
37. "Owner" means:
 - a. A person who holds any title, right, or interest, whole or partial, in a horse; or
 - b. A lessee of a horse holding an owner's license.

An interest only in the winnings of a horse does not constitute partial ownership.

38. "Patron" means a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

~~39. "Performance" means a schedule of eight races or more per day unless otherwise authorized by the commission.~~

~~40.~~39. "Permit" means an authorization by the commission to an association to conduct horse racing and pari-mutuel wagering at a specified place.

~~41.~~40. "Permitholder" means an association holding a commission permit to conduct racing meetings and pari-mutuel wagering.

~~42.~~41. "Place":

a. In general, to place means to finish a race in either first, second, or third place.

b. In particular, to place means to finish second in a race.

Example: Win - to place first in the finish.

Place - to place second in the finish.

Show - to place third in the finish.

~~43.~~42. "Post position" means the position assigned to the horse in the starting gate of a race.

~~44.~~43. "Post time" means the time set for the arrival of all horses in a race at the starting gate.

~~45.~~44. "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

45. "Program" means:

a. A schedule of eight races or more per day unless otherwise authorized by the commission.

b. A paper booklet offering racegoers various race information.

46. "Purse" means the gross cash portion of the prize for which a race is run.

47. "Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than seventy-two hours prior to its running.

48. "Quarter horse" means a horse registered with the American quarter horse association.

49. "Race" means a running contest between horses ridden or driven by jockeys for a purse, prize, or other reward run at a licensed association in the presence of the stewards of the meeting or such other horse racing contests as may from time to time be authorized by the commission. This includes purse races, overnight races, and stakes races.

50. "Recognized meeting" means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and a commission for the mutual enforcement of rulings relating to horse racing.

51. "Rules" means the rules adopted by the commission to regulate the conduct of horse racing.

52. "Schooling" means ~~practice races held using actual racing conditions, but in which no wagering is allowed~~ allowing an inexperienced horse the opportunity to become familiar with track surroundings.
53. "Scratch" means the act of withdrawing an entered horse from the race after the closing of overnight entries.
54. "Scratch time" means the time set by the association for the closing of ~~applications~~ entries to withdraw from races of that day.
55. "Security area" means the area surrounding the security stall delineated by the commission and controlled by it.
- ~~56. "Security stall" means the stall within the security barn assigned by the commission to a horse on the bleeder list, or occupancy as a prerequisite for receiving bleeder medication.~~
- ~~57.~~ 56. "Specimen" means any bodily substance, including blood ~~or~~ urine, or hair, taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner prescribed by the commission for the purpose of analysis.
- ~~58.~~ 57. "Stable name" means a name used by an owner or lessee and registered with the commission.
- ~~59.~~ 58. "Stakes race" means one in which nominators of the entries contribute to a purse for the winners. A stakes race shall close for entries more than seventy-two hours in advance of its running. A stakes race includes a race for which horses are invited by an association to run for a guaranteed purse of five thousand dollars or more, without payment of stakes.
- ~~60.~~ 59. "Starter" means a horse in a race when the starting gate doors open in front of it at the moment the official starter dispatches the horses for a race.
- ~~61.~~ 60. "Stewards" means the duly appointed racing officials or their deputies serving at a licensed horse racing meeting.
- ~~62.~~ 61. "Subscription" means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.
- ~~63.~~ 62. "Test level" means the concentration of a foreign substance found in the test sample.
- ~~64.~~ 63. "Test sample" means any bodily substance, including blood ~~or~~ urine, or hair, taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner as prescribed by the commission for the purpose of analysis.
- ~~65.~~ 64. "Thoroughbred" means a horse registered with the ~~New York~~ jockey club.
- ~~66.~~ 65. "Tout" means an individual who offers information or tips for any share of any resulting winnings. This can include spying on racehorses, during practice, or a race, in order to obtain information.
- ~~67.~~ 66. "Veterinarian" means a veterinarian currently licensed by the state board of veterinary medical examiners and the commission.
- ~~68.~~ 67. "Weigh in" means presentation of a jockey to the clerk of scales for weighing prior to a race.
- ~~69.~~ 68. "Weigh out" means presentation of a jockey to the clerk of scales for weighing after a race.
- ~~70.~~ 69. "Year" means a calendar year.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2012; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-08, 53-06.2-10, 53-06.2-10.1

CHAPTER 69.5-01-03

69.5-01-03-01. General description.

Every association conducting a race meeting shall appoint at least the following officials:

1. ~~Association~~ At least one association steward, consisting of at least one of the members of a three-member board of stewards.
2. Association veterinarian who shall assist and be responsible to the commission veterinarian and whose appointment must be from a list approved by the commission veterinarian.
3. Auditor.
4. Clerk of scales.
5. Horse identifier.
6. Horsemen's bookkeeper.
7. Jockey room attendant, custodian, or valet.
8. Paddock judge.
9. Pari-mutuel manager.
10. Racing secretary.
11. Security manager.
12. Starter.
13. Timer.
14. Track manager.
15. Such other officials as the commission may from time to time require.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-06. Stewards - General authority.

1. The stewards for each racing meeting are responsible to the commission for the conduct of the race meeting in accordance with the laws of this state and the rules adopted by the commission. The stewards only have authority to resolve conflicts or disputes between all other racing officials or licensees where the disputes are reasonably related to the conduct of each race, or races, and to punish violators of these rules in accordance with the provisions of these rules.
2. Should any steward be absent at race time, the other two stewards shall agree on the appointment of a deputy for the absent steward or if they are unable to agree on a deputy, then the racing secretary shall appoint a deputy for that race. If any deputy steward is appointed, the commission must be notified immediately by the stewards.
3. All three stewards must be present in the stands during the running of each race.

4. The period of authority for the association stewards commences upon issuance of their license by the commission and terminates thirty days after the ~~end of each racing~~final meet.
5. Stewards, from their own observations, may take notice of misconduct or rule violations and institute investigations and compliance of possible rules' violations.
6. Stewards may inspect at any time a license document or paper related to horse racing including, without limitation, partnership papers, jockey employment contracts, appointments of authorized agents or jockey agents, jockey agents' engagement records, and the adoption of colors.

History: Effective July 1, 1989; amended effective April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-12. Paddock judge.

1. The paddock judge is in charge of the paddock and has general responsibility for the saddling and mounting of horses and for the equipment used.
2. The paddock judge shall attempt to maintain consistency in the use of equipment on individual mounts. Duties of the paddock judge include:
 - a. Requiring that a ~~plate~~farrrier be in the paddock prior to each race to ensure that all horses are properly shod.
 - b. Excluding from the paddock all those persons who have no immediate business with the horses entered in a race and report rule violations in the paddock area to the stewards.
 - c. Permitting horses competing in a race to be shod in special training shoes only with the express permission of the stewards.
 - d. Reporting to the stewards all horses that fail to arrive in the paddock at the designated time.

History: Effective July 1, 1989; amended effective January 1, 2008; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-04 PERMITS AND REQUIREMENTS

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69.5-01-04-04. Racing surfaces.

Each racing association shall, as determined by the commission, safety committee, or stewards, provide the following:

1. Training and racing surfaces whose construction, elevation, and surfaces have received commission approval as safe and humane; provided, however, that upon proof of economic hardship and a bona fide effort to comply, exemptions to this section may be granted by the commission. Application for exemption must be in writing with notice to all interested parties;
2. Adequate and proper equipment to maintain said surfaces;
3. Sufficient trained personnel to properly operate said equipment; and
4. Daily records on the condition of each training and racing surface which must be open for public inspection.
5. Watering and grooming services to the track before each race. Exemptions may be allowed by the **chiefstate** steward or safety committee.

History: Effective July 1, 1989; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-06. Number of races per **performanceprogram.**

Unless otherwise permitted by the commission, no association may offer more than twelve races per **performanceprogram** on any one day.

History: Effective July 1, 1989; [amended effective April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-07. First race time approval.

The association shall notify the commission staff of the post time of the first race of each [performance program](#) for approval.

History: Effective July 1, 1989; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-08. Appointment of racing officials and department heads.

Each association shall submit to the commission at least thirty days prior to the opening day of a meeting, a complete list of the association racing officials set forth in chapter 69.5-01-03 and department heads appointed for the meeting. No person may hold any appointment for a race meeting unless approved by the commission's executive director or [chiefstate](#) steward after a determination that the appointee is qualified to perform the appointee's assigned duties, and is not prohibited by any law or rule of this state from participating in racing.

History: Effective July 1, 1989; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-10. Condition book.

The association, at least sixty days prior to the opening of each meeting, shall furnish to the commission a copy of its first condition book for approval by the executive director of the commission. Additional condition books or sheets must be furnished to the commission as soon as published. All changes to the condition book must be approved either by the executive director of the commission or the [chiefstate](#) steward.

History: Effective July 1, 1989; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-16. Detention enclosure.

Each association shall provide and maintain a designated detention area or enclosure for use by the commission in securing from horses that have run a race, samples of [hair](#), urine, saliva, blood, or other bodily substances or tissues for chemical analysis. The enclosure must include a wash rack, commission veterinarian office, a walking ring, and a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of the samples to be witnessed from outside the stall.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-05

69.5-01-05-01. Licenses required.

Every person participating in horse racing, whether as permitholder, holder of any interest in a permit, association employee, ~~concessionaire~~ vendor and contractholder and the owner or general manager of same, pari-mutuel, or racing official, and all other persons whose duties require them to be present on association premises during racing hours, or to regularly visit such premises during racing hours, are required to have an occupational license from the commission authorizing them to be employed on the licensed premises and to practice their business, profession, or skill. License applicants may be required to furnish to the commission a set of fingerprints and a recent photograph and may be required to be refingerprinted or rephotographed periodically as the commission may require.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-04. Recommendation by stewards.

The commission may not issue licenses to applicants previously not licensed in this state for the following occupations listed herein, except upon prior recommendation by the stewards at the meeting: owners, trainers, jockeys, jockey agents, ~~blacksmiths~~ farriers, apprentice ~~blacksmiths~~ farriers, veterinarians, veterinarian assistants, horse dentists, exercise persons, stable agents, and authorized agents. The stewards, for the purpose of determining recommendation under this section, may add to their membership a representative of the association, of the horsemen, of the ~~blacksmiths~~ farriers, or of the jockeys, or the commission veterinarian. The stewards may require any applicant to support such application by endorsers who may be called to testify as to the applicant's qualifications for license. The commission may renew licenses without approval of the stewards.

History: Effective July 1, 1989; [amended effective April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-06. Application endorsement.

The commission may not issue any license to any association employee or to any ~~concessionaire~~ vendor employee unless the application includes the prior endorsement of the employee's department head.

History: Effective July 1, 1989; [amended effective April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-10. Duration of license.

1. Licenses issued by the commission must be for a period of one [calendar](#) year or such other period of time greater than one year as permitted by the commission.
2. The commission may also issue a license good for one racing season at a pari-mutuel facility.

History: Effective July 1, 1989; amended effective January 1, 2008; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-13. Prohibited practices.

The following practices by licensees are prohibited:

1. Giving or offering, directly or indirectly, a bribe in any form to any person licensed by the commission to violate these rules or the laws of this state related to racing.
2. Soliciting or offering to accept, directly or indirectly, a bribe in any form by a person licensed by the commission to violate these rules or the laws of this state related to racing.
3. Failing as a licensee to report any bribe or solicitation as in subsections 1 and 2.
4. Soliciting by any licensee except the association of bets by the public.
5. Improperly influencing or attempting to improperly influence the results of a race or combining with any person or conspiring to combine with any person to improperly influence or attempt to improperly influence the results of a race.
6. Entering or starting a horse known or believed to be ineligible or disqualified.
7. Offering or receiving money or other benefit for withdrawing a horse from a race.
8. Making a wager for a jockey by any person except the jockey's owner or trainer.
9. An owner or trainer making a wager for a jockey on a horse other than that ridden by the jockey. This may not be construed to include bets on another horse in combination with such owner's or trainer's own in multiple wagering bets.
10. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden or a track bonus available to all jockeys.
11. Possessing any electrical or mechanical device designed to increase or decrease the speed of a horse during a race, other than an ordinary riding whip.
12. Bookmaking, which is the taking or receiving of a wager upon the result of any horse race of which betting is being conducted by any association licensed by the commission, except through the regular betting windows and facilities provided by the association.
13. Purchasing any ticket or share of a pari-mutuel pool for another, for hire or anything of value.
14. The giving under oath of any false statement or the refusing to testify after proper notice to the commission about any matter regulated by the commission, except in the exercise of a lawful privilege.
15. Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise or shelter, or by neglect or intentional act cause a horse to suffer unnecessary pain.
16. Permitting a horse to start a race unless the horse has been officially tattooed under the upper lip or electronically chipped or any other approved means of identification. A horse which is not properly identified may be allowed to race if all the following requirements are met:
 - a. A tattooer or chip technician is unavailable as determined by the **chiefstate** steward;
 - b. Before post time the horse is inspected by the chief steward and the commission veterinarian; and
 - c. Before post time the **chiefstate** steward and commission veterinarian certify the horse's identity to the racing secretary and the horse identifier.

17. Giving false, misleading, or inaccurate information about a horse's performance for publication in a printed program or racing publication.
18. In addition to any of the foregoing prohibited practices, any person who commits an act on the grounds of any pari-mutuel facility which is patently contrary to the best interest of racing or which is in violation of a criminal statute of the United States or of this state and classified as a felony, is subject to administrative action including license revocation, suspension, fine, or deprivation of patron privileges.
19. Disorderly or offensive conduct that breaches the public peace or use of profane, obscene, or indecent language to be heard by another or offer such prohibited conduct to any representative of the commission or the association.
20. Possessing any alcoholic beverage in any pari-mutuel wagering area of any association public areas unless the beverage is purchased on the premises.
21. Possessing any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition and as prescribed by a veterinarian. The supply of such prescribed foreign substances shall be limited by ethical practice consistent with the purposes of this section. Notwithstanding the provisions of this subsection, any person may possess within a racetrack enclosure any chemical or biological substance for such person's own use, provided that if such chemical substance is prohibited from being dispensed by any federal law or the law of this state without a prescription, such person is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to that person. Notwithstanding the provisions of this subsection, any person may possess within any racetrack enclosure any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to such person, provided that such person has notified the state steward:
 - a. Of such person's possession of such device;
 - b. Of the size of such device; and
 - c. Of the chemical substance to be administered by such device, and has obtained written permission for possession and use from the state steward.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-14. Alcohol and drug testing.

1. **Alcohol prohibition or breathalyzer test.**
 - a. No licensee or employee of any entity associated with the conduct of racing, while on the grounds of a licensed premises or racetrack may have a blood alcohol concentration of five one-hundredths of one percent by weight, nor may such persons be in any manner impaired by or under the influence of alcoholic beverages.
 - b. Stewards or a designated racing commission representative may direct any jockey or gate crew staff to submit to pre-race alcohol testing. If the results show a reading of five one-hundredths of one percent alcohol content or more by weight, such licensee or employee may not be permitted to continue such licensee's or employee's duties for that day.

- c. Acting with reasonable cause, the stewards or a designated racing commission representative may direct any such licensee or employee to submit to a breathalyzer or intoxolizer test or of a test of such person's blood. Such licensee or employee shall, when so directed, submit to such examination. If the results thereof show a reading of five one-hundredths of one percent alcohol content or more by weight, such licensee or employee may not be permitted to continue such licensee's or employee's duties for that day. Such licensee or employee shall also be subject to fine, or suspension, or other discipline by the stewards or the commission.
- d. A racing official may not consume any alcoholic beverage or prohibited substance or refuse any breath test or to submit a urine, blood, or hair sample when directed by commission staff during the race meeting.
- e. For a subsequent violation such licensee or employee may be subject to procedures following positive chemical analysis, as set out in subsection 3.
- f. Any licensee who refuses to submit to such test when duly requested to submit to such blood test as set out in this section may be subject to discipline by the stewards and by the commission.

2. Drug prohibition or body fluid test.

- a. No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised racetrack shall have present within the licensee's or employee's system any controlled substance as defined in North Dakota Century Code chapter 19-03.1 or any prescription legend drug unless such prescription legend drug was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of such physician's professional practice.
- b. Acting with reasonable cause, the stewards or a designated commission representative may direct any such licensee or employee to deliver a specimen of urine in the presence of ~~the track physician~~ a medically trained professional or subject the licensee or employee to the taking of a blood sample or other body fluids by a medically trained professional.
- c. In such cases, the stewards or the designated commission representative may prohibit such licensee or employee from participating in the day's racing or until such time as such licensee or employee evidences a negative test result.
- d. Sufficient sample should be collected to ensure a quantity for a split sample when possible.
- e. Refusal by such a licensee or employee to provide the samples described in this section, as so directed, is a violation of these rules and shall subject such licensee or employee to sanction by the stewards or the commission.
- f. All testing must be at the expense of the commission.

3. Procedures following positive chemical analysis.

- a. For a licensee's or employee's first violation such licensee or employee may not be allowed to participate in racing until such time as a licensee's or employee's condition has been professionally evaluated by an appropriate health care professional.
 - (1) After such professional evaluation, if such licensee's or employee's condition is found by the evaluator or the commission to be nonaddictive and not detrimental to the best interest of racing, such licensee or employee will be allowed to participate in racing provided such person can produce a negative test result and agrees to

further testing at the discretion of the stewards or designated commission representative to ensure unimpairment.

- (2) After such professional evaluation, should such licensee's or employee's condition be found by the evaluator or the commission to be addictive or detrimental to the best interest of racing, such licensee or employee will not be allowed to participate in racing until such time as such person can produce a negative test result and show documented proof that such person has successfully completed a certified alcohol or drug rehabilitation program approved by the racing commission. The licensee or employee must agree to further testing at the discretion of the stewards or racing commission representative to ensure the licensee's or employee's unimpairment.
- b. For a licensee's or an employee's second violation, a licensee or an employee must be suspended and allowed to enroll in a certified alcohol or drug rehabilitation program approved by the commission, and may apply for reinstatement only at the discretion of the commission.

History: Effective July 1, 1989; amended effective October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2.05, 53-06.2-10

CHAPTER 69.5-01-07

69.5-01-07-02. Entries.

1. **Filing.** The association shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or ~~telegraph~~other electronic communication subsequently confirmed in writing by the owner, trainer, or authorized agent. When any entrant or nominator claims failure or error in the receipt by an association of any entry or declaration, such entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration.
2. **Posting.** Upon the closing of entries, the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.
3. **Coupling.**
 - a. **Entry coupling.** When one or more horses entered in a race have a common owner, the horses must be coupled as an entry. However, a trainer may enter two horses, separately owned, for wagering purposes. One of the horses must be preferred. If the race overfills, only one may start. If the race does not overfill, both horses may start and run as separate betting interest. Except in time trials and stakes races, there is no limit on the number of horses a single owner or trainer may run in that race and all entrants may race uncoupled with the steward's permission for wagering purposes. If an infraction occurs where, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the owner or trainer of the other entrant, the stewards may, at their discretion, disqualify the other parts of the owned or trained entrants.
 - b. **Coupled entries prohibited.** Coupled entries may not be permitted to race on any program in a race which is part of a daily double.
 - c. **Coupling of entries by stewards.** The stewards shall couple as a single entry any horses which, in the determination of the stewards are connected by common ownership or by a common trainer or when the stewards determine that coupling is necessary in the interest of the regulation of the pari-mutuel racing industry or necessary to the public confidence in racing.
 - d. **Coupled entry excluding others.** A coupled entry may not be permitted to enter or start if the effect of the entry is to deprive an uncoupled single entry horse from starting.
4. **Splitting of a race.** If a race is canceled and declared off for insufficient entries, the association may split the list of entries for any other overnight race to provide an additional race to replace the one canceled. The racing secretary shall by lot divide the entries of the race so split into two different races.
5. **Entry weight.** Owners, trainers, or any person duly authorized by either who enter a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight may not be changed except in the case of error.
6. **Horses run once daily.** No horse may be entered for more than one race on the same day on which pari-mutuel wagering is conducted.
7. **Foreign entries.** For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "European Pattern Race Book" published jointly by the Irish turf club, the jockey club of Great Britain, and the societe ~~encouragement~~d'encouragement.

110 yards	=	100 meters
1 furlong	=	200 meters
1 mile	=	1,600 meters

8. **Weight conversions.** For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:
9. **Name.** The "name" of a horse means the name reflected on the certificate of registration or racing permit or temporary racing permit issued by the applicable horsemen's organization. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the International Code of Suffixes and constitutes part of the horse's registered name. The registered names and suffixes, where applicable, must be printed in the official program.

History: Effective July 1, 1989; amended effective January 1, 2008; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-04. Closing of entries.

1. **Overnight entries.** Entries for overnight racing must be closed at ten a.m. by the racing secretary, unless a later closing is established by the racing secretary or unless approved by the stewards.
 - a. Sweepstakes entries. If an hour for closing is designated, entries and declarations for sweepstakes cannot be received thereafter. However, if a time for closing is not designated, entries and declarations may be mailed or ~~telegraphed~~[other electronic communication](#) until midnight of the day of closing, if they are received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes which close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirement the racing secretary shall make. Closing for sweepstakes not during race meetings must be at the office of the association.
 - b. Nominations for stakes races do not close nor is any eligibility payment due on a day in which the United States postal service is not operating.

History: Effective July 1, 1989; [amended effective April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-16.1. Post to finish.

1. The start
 - a. The starter shall assure each participant receives a fair start.
 - b. If the stewards suspect a false start has occurred, the stewards shall post the inquiry sign and may disqualify the horse, declare it a nonstarter, or take no action.
 - c. If, when the starter dispatches the field, any door at the front of the starting gate stalls does not open properly due to a mechanical failure or malfunction or if any action by any starting personnel directly causes a horse to receive an unfair start, the stewards may declare the horse a nonstarter.

- d. Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse must be declared a nonstarter by the stewards.
- e. If an accident or malfunction of the starting gate, or other unforeseeable event compromises the fairness of the race or the safety of race participants, the stewards may declare individual horses to be nonstarters, exclude individual horses from all parimutuel pools or declare a "no race".
- f. If a race is declared a "no race" the purse must be distributed evenly to all participants or the funds must be returned to their source. If it is determined funds must be returned:
 - (1) All funds provided by the commission must be returned to the commission except when an association returns the funds to that association's purse pool and uses the funds to fund subsequent races.
 - (2) Nomination, entry fees, or similar payments by horsemen for eligibility in the race must be returned to the horsemen.

2. Disqualification

- a. If the stewards determine a horse is disqualified for interference, the stewards may place the offending horse behind such horses as in the stewards' judgment it interfered with, or the stewards may place it last.
- b. If a horse is disqualified for a foul, any horse in the same race owned or trained by the same interests, whether coupled or uncoupled, also may be disqualified.
- c. When a horse is disqualified for interference in a time trial race, for the purposes of qualifying only, the horse must receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and is eligible to qualify for the finals or consolations of the race on the basis of the assigned time.
- d. Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person authorized to handle or attend to a horse is prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify the horse.
- e. The stewards may determine that a horse must be unplaced for the purpose of purse distribution and time trial qualification.

3. Multiple disqualifications. If the stewards determine there is more than one incident of interference in a race for which disqualification is warranted, the stewards shall deal with the incidents in the order in which the incident occurs during the race from start to finish; except in the case in which the same horses are involved in multiple incidents. Once a horse has been disqualified, it should remain placed behind the horse with which it interfered. The stewards shall make a conscious effort to place and maintain as placed, every and all horses placed behind others for interference.

4. Use of riding ~~crop~~whip

- a. Although the use of a riding crop is not required, any jockey who uses a riding ~~crop~~whip during a race shall do so only in a manner consistent with exerting his/her best efforts to win.

- b. In all races in which a jockey rides without a riding ~~erep~~whip, an announcement of such fact must be made over the public address system.
 - c. No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, may be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.
 - d. The riding ~~erep~~whip only may be used for safety, correction, and encouragement.
 - e. All riders should comply with the following when using a riding ~~erep~~whip:
 - (1) Showing the horse the riding ~~erep~~whip and giving it time to respond before hitting it;
 - (2) Having used the riding ~~erep~~whip, giving the horse a chance to respond before using it again; and
 - (3) Using the riding ~~erep~~whip in rhythm with the horse's stride.
 - f. Prohibited use of the riding ~~erep~~whip includes striking a horse:
 - (1) On the head, flanks, or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;
 - (2) During the post parade or after the finish of the race except when necessary to control the horse;
 - (3) Excessively or brutally causing welts or breaks in the skin;
 - (4) When the horse is clearly out of the race or has obtained its maximum placing;
 - (5) Persistently even though the horse is showing no response under the riding ~~erep~~whip; or
 - (6) Striking another rider or horse.
 - g. After the race, horses are subject to inspection by a racing or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings must be reported to the stewards.
 - h. The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.
5. Horse leaving the racecourse. If a horse leaves the racecourse during a race, the horse is disqualified.
6. Order of finish
- a. The official order of finish must be decided by the stewards. The decision may be made with the aid of the photo finish system, and in the absence of the photo finish film record, the video replay. The photo finish and video replay are only aids in the stewards' decision. The decision of the stewards is final in all cases.
 - b. The nose of the horse determines the placement of the horse in relationship to other horses in the race.

7. Time trials. In absence of specific conditions for a particular race that set forth criteria to address the situations that may arise from the running of time trials to determine the eligible horses to participate in finals, these rules apply:
 - a. Except in cases in which the starting gate or racetrack physically restricts the number of horses starting, each time trial must consist of no more than ten horses.
 - b. The time trials must be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten fastest times qualify to participate in the finals. If the time trials are conducted on two days, the horses with the five fastest times on the first day and the horses with the five fastest times on the second day qualify to participate in the finals. When time trials are conducted on two days, the racing secretary shall make a best effort to split owners with more than one entry into separate days or time trials, or both.
 - c. If the association's starting gate has fewer than ten stalls or the racetrack safely accommodates fewer than ten horses, the maximum number of qualifiers must correspond to the maximum number of starting gate post positions or maximum number of horses the track can safely accommodate.
 - d. Except in races around the turn, if only eleven or twelve horses are entered to run in time trials from a gate with twelve or more stalls, the association may choose to run finals only. If eleven or twelve horses participate in the finals, only the first ten finishers receive purse money.
 - e. In the time trials, horses must qualify on the basis of time and order of finish. The times of the horses in the time trial is determined to the limit of the timer. The only exception is when two or more horses have the same time in the same trial heat. In that case, the order of finish also determines the preference in qualifying for the finals. If two or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position, a draw by public lot must be conducted as directed by the stewards. Qualifying times in separate trials may not be determined beyond the limit of the timer by comparing and/or enlarging photo-finish images.
 - f. Except in the case of a disqualification, under no circumstances may a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial.
 - g. If a horse is disqualified for interference during the running of a time trial, the horse must receive the time of the horse it is immediately placed behind plus one hundredth of a second, or the maximum accuracy of the electronic timing device. No adjustments may be made in the times recorded in the time trials to account for headwind, tailwind, offtrack, etc. If a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse must be given no time plus and that horse should not be eligible to run in the finals.
 - h. If a malfunction occurs with the electronic timer on any time trial, finalists from that time trial must be determined by official hand timing operated by two official and disinterested persons. The average of the two hand times must be utilized for the winning time, unless one of the hand times is clearly incorrect. In such cases, the more accurate hand time must be utilized for the winning time; other horses must be given times according to the order and margins of finish with the aid of the photo finish, if available.
 - i. When there is a malfunction of the timer during some time trials, but the timer operates correctly in other time trials, the accurate electronic times may not be discarded, nor may the average of hand times be used for all time trials.

- j. If the accuracy of the electronic timer or the average of the hand times, or both, are questioned, the video of a time trial may be used by the stewards to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. When the timer malfunctions and there are no hand times, the stewards may select qualifiers based on the video.
- k. If there is a malfunction of the starting gate, and one or more stall doors do not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses with malfunctioning stall doors nonstarters or may allow any horse whose stall door opened late, but still ran a time fast enough to qualify to be declared a starter for qualifying purposes. If a horse breaks through the stall door, or the stall door opens prior to the exact moment the starter purposely dispatches the field, the horse may be declared a nonstarter and the stewards may direct that all entry fees be refunded. If one or more, but not all stall doors, open at the exact moment the starter purposely dispatches the field, these horses should be considered starters for qualifying purposes, and placed according to their electronic time. If the electronic timer malfunctions in this instance, the average of the hand times, or if not available, the video may be utilized for horses declared starters.
- l. If a horse is scratched from the time trials, the horse's owner may not be eligible for a refund of the fees paid and may not be allowed to enter the final. If a horse that qualified for the final is unable to enter due to racing soundness, or scratched for any reason other than a positive drug test or a rule violation, the horse is deemed to have earned and the owner will receive, last place money. If more than one horse is scratched, those purse monies may be added together and divided equally among those owners.
- m. If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the nonqualifier with the next fastest time replaces the disqualified horse. If a qualifier is disqualified after entry for a final or consolation for any reason other than racing unsoundness, illness, or death, if necessary, the purse must be redistributed among the remaining qualifiers.

History: Effective July 1, 2017; [amended effective April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-09

69.5-01-09-01. Definitions.

1. "Accredited North Dakota-bred race horse" means a horse qualifying for and duly registered in the North Dakota breeders' fund program. For purposes of awards and purse supplements, such accreditation for horses racing shall continue through the age of twelve years. Awards for breeding mares and stallions shall continue as long as there is progeny racing.
2. "Breeder" means the owner or lessee, or the respective breed-registering organization of the dam at the time of foaling in North Dakota.
3. "Donor mare" means the mare which produces an embryo or an oocyte which, after fertilization, is transferred into the uterus of a recipient mare.
4. "Embryo transfer" means the process of transferring a donor mare embryo into a recipient mare.
5. "North Dakota-bred" means a foal born in North Dakota out of a mare registered as a broodmare under section 69.5-01-9-02 with the North Dakota racing commission prior to the foal's birth, and which mare was in North Dakota:
 - a. On or before February first of the year foaled; or
 - b. Within thirty days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and provided, in either case, that mare remained physically within the boundaries of North Dakota until foaling.
6. "North Dakota-foaled" means a horse born in North Dakota.
7. "~~Race horse~~Racehorse owner" means the owner or lessee of record with the respective breed-registering organization at the time the horse participates in a race qualifying the horse for breeders' fund awards or purse supplements under the provisions of this chapter.
8. "Recipient mare" means the surrogate mare carrying a donor mare's embryo.
9. "Stallion owner" means the owner of a stallion registered as a breeding stallion in the North Dakota breeders' fund program. North Dakota breeders' fund awards accruing to the owner of a stallion as a result of qualifying race performances by North Dakota-breds sired by a stallion shall be awarded to the owner of the stallion at the time of conception of such progeny.

In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at its sole discretion.

The requirements of this section apply to all breeds.

History: Effective January 1, 1990; amended effective March 1, 2002; July 1, 2011; January 1, 2015; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-04.1, 53-06.2-11

69.5-01-09-02. Registration and requirements for North Dakota-bred eligibility.

1. The breeder or owner of a North Dakota-bred horse shall register such horse with the North Dakota racing commission before racing to be eligible to receive breeders' fund award payments. The commission may contract with and designate an official registering agency to implement the registration of North Dakota-bred horses.

- a. The original breed registration certificate must be embossed by the commission or official registering agency before the entry into any race eligible for breeders' fund awards.
 - b. Failure to have all required paperwork submitted and breed registration certificate embossed before racing shall disqualify a horse from an award or payment from the North Dakota breeders' fund.
 - c. The purchaser of a horse is required to have all paperwork submitted and breed registration certificate embossed before racing the horse. Failure to meet these requirements shall disqualify a horse from an award or payment from the North Dakota breeders' fund.
2. Broodmare registration. A broodmare must meet the qualifications as outlined in subsection 4 of section 69.5-01-09-01 to be eligible for broodmare award payments based on a percentage of the North Dakota breeders' fund program awards earned by accredited North Dakota-bred horses foaled by the mare. In addition, the broodmare must meet the following conditions:
- a. The North Dakota racing commission or the designated agency must receive or have access to the broodmare's original breed paper or electronic registration certificate for embossing, a completed North Dakota breeders' fund program registration application as furnished by the North Dakota racing commission, and a registration fee of thirty dollars.
 - b. Failure to properly register the broodmare, as outlined in section 69.5-01-09-01 and in this section, will disqualify any subsequent claims for North Dakota breeders' fund award payments.
 - c. A broodmare may be registered at any time before the time that she delivers a foal.
3. Stallion registration. To be eligible to receive stallion award payments, the following requirements must be met:
- a. Stallions must physically be in North Dakota and registered with the North Dakota racing commission or official registering agency by February first of the current breeding year. The stallion's original breed registration certification must be received by the North Dakota racing commission or official registering agency for embossing, with a completed North Dakota breeders' fund program registration application and a registration fee of thirty dollars. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate. A leased stallion must renew its stallion registration each year.
 - b. When a stallion is purchased after February first of the current breeding season, the new owner must register the stallion within thirty days after the date of a bona fide purchase with the North Dakota racing commission or official registering agency to be eligible for the North Dakota breeders' fund program.
 - c. Stallions must remain in North Dakota for the entire current breeding season from February first to July thirty-first. Stallions registered pursuant to subdivision b must be in North Dakota as of the date of registration and remain in North Dakota through July thirty-first.
4. Foal registration and certification. For a horse foaled in North Dakota to be registered and subsequently certified as a North Dakota-bred, the following requirements must be met:
- a. Any time from foaling through December thirty-first of the foaling year that the horse was foaled in North Dakota, the foal must be registered with the North Dakota racing commission or official registering agency. The registration form must be provided by the commission and must contain the date, name, registration number, owner's name of the

- foaling dam, date the foal was born, and foal owner's statement that the foal was born in North Dakota. The application to register a foal in the North Dakota breeders' fund program as a North Dakota-bred must be accompanied by a thirty dollar registration fee.
- b. Registration applications that meet all other requirements provided in this section, but are received after the December thirty-first deadline, may be processed and approved provided that applications and registration fees received after December thirty-first of the foaling year are accompanied by a late fee of three hundred dollars.
 - c. An investigator appointed by the commission shall have access to the premises on which qualified mares, North Dakota-registered stallions, and North Dakota-bred foals or horses are kept. The investigator may perform random inspections of North Dakota-registered foals as required by the commission.
 - d. The original or electronic breed registration certificate must be embossed by the commission or official registering agency prior to the entry into any restricted race.
 - e. Failure to have the breed registration certificate embossed shall disqualify a horse from entry in a race restricted to, or with preference given to, accredited North Dakota-bred horses, and shall prohibit an award or payment from the North Dakota breeders' fund.
 - f. The owner of the dam of a foal submitted to the registering agent or the North Dakota racing commission for registration in the North Dakota breeders' fund program must notify the North Dakota racing commission ten days prior to shipping if the dam is to be leaving the state prior to ninety days after foaling.
 - g. The foal of a mare registered in the North Dakota breeders' fund program, but owned by an out-of-state individual or corporation, will be required to be inspected by a state-licensed veterinarian and a commission state form veterinarian's certificate verifying that the foal was born in the state of North Dakota submitted with the original foal application paperwork. All of these items are at the expense of the owner.
5. Embryo transfer. For a resulting foal from an embryo transfer to be eligible for accreditation in the North Dakota-bred program, the donor mare must be accredited in the broodmare registry before foaling.
- a. If a donor mare is bred in North Dakota, the donor mare may be shipped out of North Dakota to have the embryo removed but must return to North Dakota within thirty days to continue her domicile, or if the donor mare is to be bred in subsequent cycles at an out-of-state location to obtain additional embryos, the broodmare must return to North Dakota and resume her domicile within thirty days of her final breeding date for that year's breeding season. Nothing in this section would prohibit an accredited broodmare that is serviced out-of-state from producing multiple embryos which are transferred to recipient mares during the period of time she is permitted to be out-of-state for breeding purposes.
 - b. Effective January 1, 2023. Before the resulting foal of an embryo transfer is eligible for North Dakota accreditation, the following requirements must be met:
 - (1) All recipient mares shall be permanently identified using methods listed on the "recipient mare form" provided by the commission. The "recipient mare form" must be completed by the breeder and returned to the commission by November first of the year before foaling. A "recipient mare form" may not be accepted by the commission after this date.
 - (2) Recipient mares must be domiciled in North Dakota no less than thirty days before the due date indicated on said "recipient mare form" and remain in North Dakota

until the foal is born. If a recipient mare is not domiciled in North Dakota at least thirty days before the due date listed on said form, or leaves North Dakota before foaling, the resulting foal is ineligible for entry into the North Dakota-bred program.

- (3) Any breeder whose "recipient mare form" is on file with the commission shall be responsible to notify the commission in writing, within thirty calendar days, of any changes in domicile location or ownership. In addition, any new owners of said recipient mares, if any, shall notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare.
- (4) If there is a transfer in ownership of a foal in utero, the new owner shall be responsible to notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare carrying the foal in utero.
- (5) Failure to comply with these requirements will result in foals being ineligible for entry into the North Dakota-bred program.

(6) "Recipient mare forms" may not be accepted by the commission after November first of the year before foaling.

~~c. "Recipient mare forms" may not be accepted by the commission after November first of the year before foaling. Any breeder whose "recipient mare form" is on file with the commission shall be responsible to notify the commission in writing, within thirty calendar days, of any changes in domicile location or ownership. In addition, any new owners of said recipient mares, if any, shall notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare. If there is a transfer in ownership of a foal in utero, the new owner shall be responsible to notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare carrying the foal in utero. Failure to comply with these requirements will result in foals being ineligible for entry into the North Dakota-bred program.~~

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-03. Administration of North Dakota breeders' fund program.

1. The North Dakota racing commission shall deduct one-half of one percent from each pari-mutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota breeders' fund as provided for by North Dakota Century Code section 53-06.2-11. All moneys held in the fund must be deposited with the North Dakota state treasurer in accordance with North Dakota law. All moneys shall remain in the control of the state treasurer until, upon action of the North Dakota racing commission, funds are transferred to the breeders' fund account. The executive director of the racing commission is responsible for the timely deposit of all revenue derived from the breeders' fund take-out and shall keep accurate records of deposits and disbursements.
2. The management procedures, rules, fee schedules, registration forms, publications, and all other instruments necessary to the operation of the North Dakota breeders' fund program by the official registering agency are subject to the review and approval of the commission. The commission must be provided copies of the completed registration forms for all horses entered in the North Dakota breeders' fund program, or the North Dakota stallion or broodmare registry. The official registering agency shall provide the commission with a financial accounting of the North Dakota breeders' fund program by an independent accountant within ninety days of the end of the fiscal year. ~~Costs~~The costs of administering this program will be funded by the North Dakota breeders' fund.

3. The racing industry advisory committee shall be the officially recognized advisory body to the North Dakota racing commission on all matters pertaining to the North Dakota breeders' fund program. The actions of the racing industry advisory committee shall be advisory only and shall not be binding upon the North Dakota racing commission. Establishment and membership of the racing industry advisory committee as to number and representative affiliation shall be at the discretion of the North Dakota racing commission.
4. Any person who desires to contest the accuracy of the commission's records or accounting of the North Dakota breeders' fund distribution in any one year shall file a written claim with the commission prior to the end of the calendar year. The written claim must state the basis for the claim.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-06. False statement concerning North Dakota-bred registration.

Any person who fails to disclose, or states falsely any information required in the registration process of the North Dakota breeders' fund program, may be subject to penalties at the discretion of the commission. Owners and breeders of ~~certified~~[accredited](#) North Dakota-breds who receive an owner's bonus, or breeders' award, shall refund to the North Dakota breeders' fund any amount so received in the event it is later determined that any information provided to the North Dakota racing commission during the ~~certification~~[accreditation](#) process which formed the basis for ~~certification~~[accreditation](#) as a North Dakota-bred was incorrect or untrue. Such penalties may also include disqualification and exclusion from the North Dakota breeders' fund program of both the horses and persons involved in the dispute.

History: Effective January 1, 1990; amended effective March 1, 2002; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-09. Establishment of North Dakota-bred added money and award payments at a race meeting.

The North Dakota racing commission shall establish North Dakota breeders' fund program added money and award payment levels for accredited North Dakota-bred maiden, claiming, allowance, and stakes races at commission-licensed race meetings and authorize increases and decreases in those levels as the racing commission deems appropriate with respect to funds available in the North Dakota breeders' fund. ~~For this section trials are not considered eligible races for award payments.~~

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022; [April 1, 2024](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

TITLE 75
DEPARTMENT OF HUMAN SERVICES

APRIL 2024

**ARTICLE 75-02
ECONOMIC ASSISTANCE**

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75-02-01.1	Aid to Families With Dependent Children [Repealed]
75-02-01.2	Temporary Assistance for Needy Families Program
75-02-01.3	Child Care Assistance
75-02-02	Medical Services
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**CHAPTER 75-02-01.2
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM**

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75-02-01.2-01. Definitions.

Unless otherwise stated in this section, the definitions set forth in North Dakota Century Code section 50-09-01 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Applicant" means an individual who is seeking a benefit under this chapter.
2. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
3. "Assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, but does not include nonrecurring, short-term benefits, work subsidies, supportive services provided to families who are employed, and refundable earned income tax credits.
4. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the household are evaluated to determine the amount of any benefits to be paid during the benefit month.
5. ~~"Benefit cap child" means a child born after June 30, 1998, to a household member who was a recipient of assistance under this chapter during the month of probable conception.~~
- ~~6.~~ "Benefit month" means the calendar month immediately following the processing month.
- ~~7.6.~~ "Benefits" means the amount of temporary assistance for needy families assistance a family receives including the temporary assistance for needy families amount, essential services, and supportive services, reduced by recoupments.
- ~~8.7.~~ "Caretaker relative" means the relative so designated by the household who:
 - a. Lives with an eligible dependent child;
 - b. Is a pregnant woman, caretaker relative to no dependent child, ~~in the last trimester of her pregnancy;~~ or

c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.

~~9.8.~~ "Child only case" means a case in which the only eligible individual is a dependent child and the caretaker relative is ineligible as a nonlegally responsible caretaker, or as a legally responsible caretaker due to being a supplemental security income recipient, a disqualified alien, a disqualified fleeing felon, a disqualified parole violator, a disqualified probation violator, or disqualified for committing fraud.

~~10.9.~~ "Child support agency" has the same meaning as defined in North Dakota Century Code section 14-09-09.10.

~~11.10.~~ "Department" means the North Dakota department of [health and](#) human services.

~~12.11.~~ "Dependent child" means a needy child:

a. Who lives in the home of a relative by birth, marriage, or adoption;

b. Who has been deprived of parental support or care by reason of:

(1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;

(2) The death of a parent; or

(3) The physical or mental incapacity of a parent; and

c. Who is:

(1) Under the age of eighteen; or

(2) Under the age of nineteen and a full-time student in a secondary school or a vocational or technical school that is equivalent to a secondary school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.

~~13.12.~~ "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the household, for income to be considered earned.

~~14.13.~~ "Earned right benefit" means a benefit an individual is entitled to receive as a result of being employed, even after the employment has terminated. These benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; workforce safety and insurance wage-loss and permanent impairment benefits; and unemployment compensation.

~~15.14.~~ "Eligible caretaker relative" means a caretaker relative who:

a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;

b. If deprivation of parental support or care is by reason of the incapacity or disability of a parent, is the incapacitated or disabled parent or the eligible dependent child's other parent, but not stepparent;

- c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
- d. Is not a recipient of supplemental security income benefits; and
- e. Is in financial need;
- f. Is a pregnant woman, ~~in the third trimester of her pregnancy~~, caretaker relative to no other dependent or legally responsible caretaker child, who or whose husband is incapacitated; or
- g. Is related to a dependent child by birth, whether by whole or half-blood, by marriage, or by adoption, and who is within the fifth degree of relationship to that child.

46.15. "Family" includes:

- a. An individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families;
- b. The parents of any dependent child and all brothers and sisters of any dependent child, whether by whole or half-blood, marriage, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits;
- c. An alien who does not meet citizen and alienage requirements;
- d. An alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming;
- e. An individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction or disqualification; and
- f. An individual who is a household member who is a legal dependent or a legally responsible caretaker of a member of the household, but does not include roomers or boarders.

47.16. "Full-time student" means a student who:

- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
- b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;
- c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;
- d. Is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, according to a written statement from school officials or who is home schooled; or
- e. Is an individual participating in job corps, whether an adult or a child.

- ~~18~~.17. "Housing costs" means the full amount of rent or, if purchasing a home, the full amount of the mortgage, property insurance, property taxes, special assessments, repairs, and improvements of the home.
- ~~19~~.18. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
- ~~20~~.19. "Legally responsible" means having a legal duty for the financial support of another ~~person~~individual.
- ~~21~~.20. "Lives in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations in which the child is temporarily absent from the home, with a plan to return, when the child:
- Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
 - Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
 - Receives services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;
 - Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
 - Receives education at a boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.
- ~~22~~.21. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
- An individual whose parental rights have been terminated with respect to that child; or
 - A stepparent.
- ~~23~~.22. "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.
- ~~24~~.23. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the human service zone determines eligibility for, and the amount of, any benefit to be paid during the benefit month.
- ~~25~~.24. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- ~~26~~.25. "Prospective budgeting" means the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the human

service zone's best estimate of the income and circumstances of the household in those months, of the amount of any grant of benefits in those two months.

- | ~~27~~.26. "Prudent person concept" means a method or program administration that relies upon individual staff members:
 - a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and
 - b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.
- | ~~28~~.27. "Recipient" means an individual who receives cash assistance under this chapter.
- | ~~29~~.28. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
- | ~~30~~.29. "Retrospective budgeting" means a determination, made by the human service zone during the processing month, based on income and circumstances of the household, during the base month, of the amount of any grant of assistance in the benefit month.
- | ~~31~~.30. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.
- | ~~32~~.31. "Special item of need" means an additional benefit paid to a temporary assistance for needy families household to reimburse certain expenses that are not included in the basic standard of need. These items include health insurance premiums, car seats, essential service, house allowance, and catastrophic events.
- | ~~33~~.32. "Standard employment expense allowance" means twenty-seven percent of earned income, or one hundred eighty dollars, whichever is greater, to be first disregarded from the earned income of any child or adult relative applying for benefits under this chapter, or any other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
- | ~~34~~.33. "Stepparent" means an individual married to a parent of a child after the birth or adoption of the child, but who is not also a parent of that child by either birth or adoption.
- | ~~35~~.34. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- | ~~36~~.35. "Supportive services" means services approved by the department and provided to an individual receiving other temporary assistance for needy families benefits, to assist in training for employment, seeking employment or maintaining employment, and to support job opportunities and basic skills program activities.
- | ~~37~~.36. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods beginning July 1, 1997.
- | ~~38~~.37. "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.

~~39.38.~~ "Unearned income" means income that is not earned income.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-02.3. Transition assistance.

Transition assistance promotes job retention by providing an extended period of cash assistance to qualified families under temporary assistance for needy families. Households with earnings from employment exceeding the allowable standard of need for their household size may remain eligible for transition assistance for up to six months. Transition assistance is assistance under title 45, Code of Federal Regulations, part 260.31, and is a benefit for purposes of North Dakota Century Code section 50-09-06.1. Transition assistance may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section. For purposes of this section, "caretaker" means ~~a person~~ [an individual](#) who provides support to a minor child and who may or may not receive benefits. All provisions of this chapter apply except:

1. A family may not receive a grant for transition assistance in any month in which that family receives a grant for temporary assistance for needy families or diversion assistance.
2. No one may be provided transition assistance in an application month. Only recipients of temporary assistance for needy families may become eligible for transition assistance.
3. Transition assistance provides a monthly job retention incentive, transportation assistance, and special items of need as allowed under the temporary assistance for needy families program.
4. A family may not receive transition assistance for more than six consecutive months.
5. Transition assistance may not be provided to:
 - a. A caretaker sanctioned due to noncompliance with work requirements;
 - b. A caretaker relative, in a child-only case;
 - c. A minor parent who is not the head of household or spouse of the head of household;
 - d. An alien who is ineligible to receive assistance due to his or her immigration status;
 - e. A caretaker in receipt of supplemental security income benefits; and
 - f. A caretaker with a disqualification penalty applied for a voluntary job quit or voluntary refusal of an offer of employment or training for employment.

History: Effective January 1, 2009; amended effective January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-06. Selection of primary individual.

1. Each household shall have a primary individual. The primary individual must be identified among the household members, with one of the following relationships to a dependent child member of the household, using the following order of priority:
 - a. A natural or adoptive parent;

- b. An adult relative, within the fifth degree of kinship;
 - c. A stepparent;
 - d. A spouse of any **person****individual** identified in subdivision a, b, or c, whether or not that marriage is terminated by death or divorce; and
 - e. A minor brother, sister, half-brother, half-sister, stepbrother, or stepsister who is at least sixteen years of age.
2. The primary individual may be eligible or ineligible for the assistance.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2017; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-12. Determining claims of good cause.

Determinations concerning claims of good cause require the use of decisionmaking principles. These principles must be applied to the individual's statements and information to determine if the requirements of good cause are met. The decisionmaking principles are:

- 1. The individual claiming good cause is responsible to show that good cause exists.
- 2. Uncorroborated statements of fact are less believable than corroborated statements.
- 3. Statements by **persons****individuals** with a reputation for being untruthful are less believable than similar statements by **persons****individuals** without that reputation.
- 4. A reputation for being untruthful exists if the files maintained by the department, the human service zone, or the job opportunities and basic skills program employment contractor contain evidence of untruthful statements made by the individual, or if the individual has made untruthful statements that are a matter of public record.
- 5. Statements by individuals with a reputation for failures or delays in furnishing information necessary for official action are less believable than similar statements by individuals without that reputation.
- 6. A reputation for failures or delays in furnishing information necessary for official action exists if the files maintained by the department, the human service zone, or a job opportunities and basic skills program employment contractor contain evidence of any failure or delay, without good cause, to furnish reports, including monthly reports, necessary verifications, or a failure or delay in attending meetings or interviews intended to secure information necessary for official action.
- 7. A statement of fact, made by an individual with something to gain if that statement is regarded as true, is less believable than a similar statement made by an individual with little or nothing to gain.
- 8. An individual's explanations or reasons for claiming good cause must be judged by a prudent person concept. A prudent person is one who exercises those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for protection of their own interests and the interests of others.
- 9. Statements of fact made by the individual claiming good cause, or by other individuals who support or oppose the claim of good cause, are not presumed to be either truthful or

untruthful. Rather, statements of fact must be evaluated to determine if they are more likely than not or less likely than not to be true.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2009; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-13. Residence.

1. There is no durational state residence required for eligibility for benefits.
2. No individual who is otherwise eligible may be denied assistance under the program if the individual resides in the state.
3. A resident of the state is one who:
 - a. Is living in the state voluntarily with the intention of making the **person's individual's** home there; or
 - b. At the time of application, is living in the state and is not receiving temporary assistance for needy families from another state.
4. For purposes of establishing the temporary assistance for needy families filing unit, a child is a resident of the state in which the child is living other than for a temporary basis. For all other purposes of this chapter, a child is a resident of the state in which the child is living.
5. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily.
6. Residence is retained until abandoned.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-18. Incapacity of a parent.

1. A child, if otherwise eligible for temporary assistance for needy families, is deprived of parental support or care when the child's parent has a physical or mental condition, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of incapacity to earn a livelihood, the department shall take into account the limited employment opportunities of **persons individuals** with disabilities.
2. The incapacity must substantially reduce or eliminate employment in the parent's usual occupation. If the incapacity does not allow the parent to be able to return to the parent's usual occupation, once medically capable, the parent will be expected to adapt to another occupation. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the **person individual** is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.
3. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.

4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress toward remediation of the incapacity. For purposes of this section, reasonable progress toward remediation of the incapacity means cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including physical therapy, counseling, use of prosthesis, drug therapy and weight loss, cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
5. A parent who engages in activities inconsistent with the claimed incapacity may be determined to not be incapacitated.
6. The department may require a parent to demonstrate reasonable progress toward remediation of the incapacity, and may set reasonable deadlines for the demonstrations.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2014; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-21. Asset considerations.

1. a. All assets that are actually available must be considered. Assets are actually available when at the disposal of a member of the household; when a member of the household has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when a member of the household has the lawful power to make the asset available or to cause the asset to be made available. A determination that an asset is deemed available is a determination that the asset is actually available.
- b. Assets must be reasonably evaluated.
- c. All assets owned individually or jointly by members of a household are deemed available to the household.
- d. Assets owned jointly by a member of the household and an individual who is a member of a separate household, but has a legal obligation to support a member of the household, are presumed available to the household unless the applicant can show that the assets are in fact not available.
- e. If the household can demonstrate that only a portion of an asset is available, only that portion may be considered.
- f. An asset is not available if it cannot be practically subdivided or sold.
- g. A stepparent's assets, whether owned exclusively by the stepparent or jointly with the parent, are deemed available in their entirety to the parent. Because the temporary assistance for needy families filing unit must include the parent, if technically eligible, the equity value of all assets, including the stepparent's assets, must fall within program asset limitations or the unit is ineligible.
- h. An asset may be temporarily unavailable while the household is taking reasonable measures to overcome a legal impediment.

- i. Assets ordinarily available to the household may be rendered temporarily unavailable to members of such a unit who are being served by shelters for abused ~~persons and families~~ individuals while the legal ramifications of the circumstances that led to the need for such services are explored.
 - j. As in all instances in which there is a question of ownership, the household must be given the opportunity to present evidence in rebuttal of the presumption that a joint account is an available asset. A successful rebuttal may result in a finding that the funds in the joint account are in fact not owned by the household. For example, when the funds are clearly available to the family only in the event of the coowner's death, access is restricted and the funds are therefore not an asset. The funds are likewise not an asset to the family if withdrawals from the account are possible only with the surrendering of the passbook, which is not accessible to the applicant or recipient, or with dual signatures and the coowner may not sign.
 - k. An asset may be sold or exchanged for another asset. An asset acquired in an exchange or with the proceeds from a sale continues to be treated as an asset subject to the asset limits, exemptions, and exclusions applicable to the type of asset acquired. This subdivision does not supersede other provisions of this chapter which describe or require specific treatment of assets, or which describe specific circumstances that require a particular treatment of assets.
2. The financial responsibility of any individual for any applicant or recipient of temporary assistance for needy families is limited to members of the temporary assistance for needy families filing unit. Such responsibility is imposed upon applicants or recipients as a condition of eligibility. Except as otherwise provided in this section, the assets of the members of the temporary assistance for needy families filing unit are deemed available to an applicant or recipient, even if those assets are not actually contributed. For purposes of this subsection, biological and adoptive parents, but not stepparents, are treated as parents.
 3. Temporary assistance for needy families benefits, and any income, earned or unearned, which is taken into account in determining the amount of a grant for a particular month, may not be treated as an asset in that month.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; April 1, 2024.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-30. Limitation on benefits to pregnant women.

A pregnant woman, not made ineligible by any other provision of this chapter, who is caretaker relative to no child, may receive temporary assistance for needy families based upon the standard of need for one adult, without consideration of any additional pregnancy-related needs, ~~no earlier than the sixth month of pregnancy. Medical~~ medical verification of the pregnancy, and the approximate date on which the pregnant woman is expected to deliver must be provided.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; April 1, 2024.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02, 50-09-29

75-02-01.2-30.1. Benefit cap.

Repealed effective April 1, 2024.

~~—Any household that includes a child born after June 30, 1998, may be subject to a benefit cap. If a parent was an adult during the probable month of conception and received assistance, or would have~~

~~been eligible for assistance if not for a sanction or a disqualification, assistance will not be increased due to the birth of that child. The benefit cap does not apply if:~~

- ~~1. The parent disputes the probable month of conception and provides medical verification to substantiate the parent's claim;~~
- ~~2. The pregnancy is determined to be the result of rape or incest;~~
- ~~3. The case has been closed for more than twelve months; or~~
- ~~4. The benefit cap child resides with someone other than the parent who received assistance during the probable month of conception.~~

~~History: Effective January 1, 2003.~~

~~General Authority: NDCC 50-09-02, 50-09-25~~

~~Law Implemented: NDCC 50-09-02~~

75-02-01.2-31. Age of parent - Effect on eligibility.

1. For purposes of this section:
 - a. "Adult caretaker" means a caretaker who is not a minor caretaker.
 - b. "Minor caretaker" means an individual, under the age of eighteen years, who has never been married and who:
 - (1) Is the parent of a dependent child living in the same household; or
 - (2) Is eligible as a pregnant woman ~~in the third trimester of her pregnancy~~ who is a caretaker relative to no child.
2. A minor caretaker who lives with the minor caretaker's own parents is eligible only if eligibility may be established after consideration of the income, but not the assets, of the parents with whom the minor caretaker lives, applying the following disregards:
 - a. The greater of one hundred eighty dollars or twenty-seven percent of earned income of each employed parent of the minor caretaker, for work expenses.
 - b. An amount equal to the standard of need, not including special allowances or special items of need, applicable to a household consisting of the minor caretaker's parents and any other individuals living in the home, who are or could be claimed as dependents of the minor caretaker's parents for federal income tax purposes, but who are not members of the household.
 - c. Amounts paid by the minor caretaker's parents, to support individuals who are not members of the household, who are or could be claimed as dependents of the minor caretaker's parents for federal income tax purposes.
 - d. Amounts paid by the minor caretaker's parents, for child support or spousal support, health insurance premiums, or child or adult dependent care costs related to employment or employment and education or training, to individuals who are not members of the household.
3. An adult caretaker, who lives with the adult caretaker's own parent or legal guardian, if eligible, is eligible without consideration of the income or assets of any adult caretaker's parents with whom the adult caretaker lives, except that regular contributions of money made by such adult caretaker's parent to any member of the household must be considered.

4. For purposes of this section, a minor caretaker who becomes an adult while living with the minor caretaker's own parents or legal guardian is treated as an adult caretaker, effective the first day of the month in which the caretaker reaches age eighteen.
5. For purposes of this section, a minor caretaker who ends residency with the minor caretaker's own parent is treated as having ended residency on the first day of the month in which the minor caretaker left the minor caretaker's parent's home.
6. For purposes of this section, a minor caretaker who resumes residency with the minor caretaker's own parent is treated as having resumed that residency on the first day of the month after the month in which the minor caretaker resumed residency with the minor caretaker's parent.
7. A minor caretaker who does not live with either of the minor caretaker's own parents, if eligible, is eligible without consideration of the income or assets of the minor caretaker's parent except that regular contributions of money made by a minor caretaker's parent to any member of the household must be considered. The minor caretaker's parents remain legally responsible for the minor caretaker's support. The matter must be referred to the child support agency for the purpose of securing support from the minor caretaker's parents as well as for the purpose of securing support for the minor caretaker's child from the child's absent parent.
8. No household may include the child of a minor caretaker, living with that minor caretaker, during any time when the minor caretaker is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor caretaker is included in the minor caretaker's foster care maintenance benefit.
9. Except as provided in subsection 10, a minor caretaker must live in the home of the minor caretaker's own parent, legal guardian, or other adult relative, or in a state-approved adult supervised supported living arrangement.
10. A minor caretaker may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the human service zone:
 - a. The minor caretaker has no living parent or legal guardian;
 - b. No parent or legal guardian of the minor caretaker will allow the minor caretaker to live in the home of the parent or legal guardian;
 - c. The physical or emotional health or safety of the minor caretaker or the minor caretaker's child would be jeopardized if they lived with the minor caretaker's parent or legal guardian; or
 - d. After reasonable search, the whereabouts of the minor caretaker's parents or legal guardian are unknown.
11. A household consisting of two natural or adoptive parents may be eligible for benefits when at least one parent is age sixty-five or older, if all factors of eligibility are met and the household's countable income is less than the temporary assistance for needy families standard of need.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02, [50-09-29](#)

75-02-01.2-33. Assignment of right to support.

1. The child support agency must be notified of any child, except ~~a benefit cap child or~~ a child in receipt of supplemental security income, who is a member of the household and whose eligibility for assistance is based on the continued absence of the child's parent from the home.
2. The applicant and, upon request, any member of the household for whom temporary assistance for needy families is requested, as a condition of eligibility shall:
 - a. Execute all necessary documents to protect the right of any member of the household, and the agency, to child support from the absent parent of such member; and
 - b. Cooperate in obtaining support and in establishing paternity of any child in the household with respect to whom paternity has not been established.
3. The requirement for the assignment of rights to support from absent parents continues through the month in which the latest of the following occurs:
 - a. The child reaches age eighteen.
 - b. The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.
 - c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.
4. For purposes of this section:
 - a. "Cooperate in obtaining support and in establishing paternity" includes:
 - (1) Appearing at a state or local office designated by the child support agency to provide information or evidence relevant to the case;
 - (2) Appearing as a witness at a court or other proceeding;
 - (3) Providing credible information, or credibly attesting to lack of information;
 - (4) Paying to the department any support funds received that are covered by the assignment of rights; and
 - (5) Taking any other reasonable steps to assist in establishing paternity and securing child support.
 - b. A child support agency shall determine if the applicant, recipient, or any member of the household, who is required to cooperate in obtaining support and establishing paternity, has done so. In making that determination, the child support agency shall consider if any information provided, or attestation to lack of information, is corroborated by relevant circumstances and is credible. Information provided, or an attestation to lack of information, is not presumed correct.
5. An individual shall cooperate in establishing paternity of a child born out of wedlock for whom the individual can legally assign rights, and obtaining child support and payments for the individual and any other individual for whom the individual can legally assign rights, unless cooperation is waived by the human service zone for good cause.
6. The custodian who refuses to cooperate in obtaining support, including establishing paternity, is ineligible to receive assistance. If the custodian continues to refuse to cooperate, the entire

household shall become ineligible for assistance and may not reapply for one full benefit month following case closure.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-37. Determining membership of the household.

1. The household must include at least one eligible child unless:
 - a. The only child receives supplemental security income benefits; or
 - b. The household includes a pregnant woman ~~in the last trimester of her pregnancy~~.
2. Any parent and spouse of the parent of a dependent child who reside in the home must be included in the household.
3. If the household includes a parent and a needy dependent child, any other child who resides in the home, for whom assistance is sought, and to whom the parent is a relative by birth, marriage, or adoption, must be included in the household.
4. If the household includes a parent and the parent's nonneedy dependent child or children, any other needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, must be included in a household which consists only of the needy dependent child or children.
5. If the household includes a parent, the parent's needy dependent child or children, and other dependent children to whom the parent is a relative by birth, marriage, or adoption, the household must include the parent and the parent's needy dependent child or children, and may include any needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, but exclude any nonneedy dependent child or children who is not the parent's child but to whom the parent is a relative by birth, marriage, or adoption, and who is not a brother or sister, whether by the whole or half-blood or by adoption, to a needy dependent child.
6. If the household includes a stepparent but does not include a natural or adoptive parent, the household must include the stepparent of the natural or adoptive parent's needy dependent child or children and any brothers and sisters of the needy dependent child, whether by whole or half-blood or by adoption, and any natural or adoptive children of the stepparent.
7. A minor parent who lives in the home of a parent of the minor parent is treated as a dependent child in a household that includes a parent of the minor parent unless:
 - a. The minor parent is married or formerly married and divorced, but not formerly married in an annulled marriage;
 - b. The minor parent has resided with the other parent of the minor parent's child; or
 - c. The minor parent has lived separately and apart from the minor parent's parent or lawful guardian, with the consent or acquiescence of the minor parent's parent or lawful guardian, while managing the minor's own financial affairs regardless of the source of income, so long as it is not from any activity declared to be a crime by the laws of North Dakota or the United States.

8. Household members who are receiving supplemental security income benefits may not be included in the household.
9. Household members who are ineligible for assistance because of a sanction or disqualification imposed under this chapter must be included in the household for the purpose of consideration of income and assets of the sanctioned household member.
10. Household members who are ineligible for assistance because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the household for the purpose of consideration of income and assets of those household members.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02, [50-09-29](#)

75-02-01.2-44. Income described.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to [persons individuals](#) other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.
2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each household member must accept any earned rights benefits to which entitled. Each household member must provide verification as to whether the household member is qualified for earned rights benefits; and, if qualified, must make application for those benefits and secure those benefits if qualified.
4. Earned income includes:
 - a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
 - b. Earnings from on-the-job training including the Workforce Innovation and Opportunity Act;
 - c. Wages received as the result of participation in a program under the Older Americans Act;
 - d. Wages received from sheltered workshop employment;
 - e. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;
 - f. Compensation for jury duty;
 - g. Tips;
 - h. Income from boarders;

- i. Income from room rentals;
 - j. Income from participation in job corps; and
 - k. Income from internship or stipends.
5. Unearned income includes:
- a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;
 - b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;
 - c. Cash contributions;
 - d. Cash gifts;
 - e. General assistance payments made to any member of the household by a human service zone or the bureau of Indian affairs; and
 - f. Any other form of income that is not earned income.
6. Deemed income includes:
- a. In the case of income deemed from a stepparent, that stepparent's entire gross income less:
 - (1) The greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance;
 - (2) An additional amount for the support of the stepparent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent and those other individuals described in this paragraph;
 - (3) Spousal support payments, child support payments, health insurance premiums, and child or adult dependent care costs related to employment or employment and education or training actually being made to or on behalf of ~~persons~~individuals not living in the home; and
 - (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent as dependents for federal income tax purposes.
 - b. In the case of income deemed from the sponsor of a sponsored alien, the income of the sponsor and the sponsor's spouse is calculated by allowing:
 - (1) The earned income disregard of the greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance; and
 - (2) A disregard equal to one hundred thirty percent of the federal poverty level equal to the household size of the sponsor.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2017; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-51. Disregarded income.

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage household members to earn income.
2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the cash grant amount.
 - a. The greater of one hundred eighty dollars or twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard employment expense allowance. The amount remaining is net earned income.
 - b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
 - c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
 - (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income may be disregarded for six months beginning the month in which the earned income is first budgeted.
 - (2) If a recipient has earned income, at least thirty-five percent of the net earned income may be disregarded for months seven through nine beginning the month earned income is first budgeted.
 - (3) If a recipient has earned income, at least twenty-five percent of the net earned income may be disregarded for months ten through ~~thirteen~~[twelve](#) after the month earned income is first budgeted.
 - (4) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the ~~thirteenth~~[twelfth](#) month after the month earned income is first budgeted.
 - (5) Individuals that have received a full ~~thirteen~~[twelve](#) months of the incentive known as the time-limited percentage will not be eligible for this incentive again unless the individual has been off assistance for twelve or more months.
 - d. An employed household member who receives an employment incentive disregard for a period of at least six consecutive months is provided employment incentive disregards of at least fifty percent for the first six months beginning the month in which the income is first budgeted, at least thirty-five percent for months seven through nine, at least twenty-five percent for months ten through ~~thirteen~~[twelve](#), and none thereafter.
 - e. An employed household member who receives an employment incentive disregard for a period of less than six consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment was the first month income is budgeted retrospectively.

- f. If an employed household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the household member was employed.
 - g. If any nondisregarded income remains, a health insurance premium, or paid child or spousal support, if applicable, may be disregarded.
 - h. If any nondisregarded income remains, child and dependent care costs that are employment-related or a combination of employment-related and education or training-related may be disregarded.
3. An income disregard is available ~~only~~ if the eligible employed individual previously received assistance, ~~but has not received temporary assistance for needy families at least twelve months or~~ has not completed the ~~thirteen-month~~twelve month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:
 - a. No payment was made because the calculated cash grant was less than ten dollars; or
 - b. The household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle.
 4. If, in any month, additional income received from a recurring source causes the household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
 5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2017; April 1, 2024.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02, 50-09-29

75-02-01.2-90. Job opportunities and basic skills program - Supportive services and post temporary assistance for needy families supportive services.

1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an allowable work activity. No supportive service may be provided without approval from the employment contractor or eligibility worker.
2. Post temporary assistance for needy families supportive services may be provided to assist employed former temporary assistance for needy families recipients to succeed in the workforce and avoid the need to receive further temporary assistance for needy families benefits.
3. Supportive services may include:
 - a. Relocation assistance provided to a job opportunities and basic skills participant if:
 - (1) The individual has a bona fide offer of employment, verified by the employment contractor, which will increase the individual's potential for increased earnings, job advancement, or permanent employment; or

- (2) The individual requests and receives approval from the employment contractor to move from an area of the state with few employment opportunities to another area of the state with greater employment opportunities, or to an area out of state with greater employment opportunities.
 - b. Monthly transportation assistance provided to participants in an approved work activity, if necessary for continued participation.
 - c. Child care expense reimbursement in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858].
 - d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:
 - (1) There is no other ~~person~~ individual in the household who can provide the care; and
 - (2) The incapacitated or disabled adult household member cannot provide self-care.
 - e. Assistance in the purchase of employment-related clothing or personal needs determined by the employment contractor to be reasonable and necessary for the participant to enter employment.
 - f. Assistance in the purchase of tools or equipment determined by the employment contractor to be required for the participant to accept employment.
 - g. Assistance in the cost of repairs determined by the employment contractor to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
 - (1) The vehicle is registered to a member of the household;
 - (2) The vehicle is needed by the participant to get to work or another approved work activity; and
 - (3) The general condition and value of the vehicle justifies repairs.
 - h. Assistance for defraying the cost of books, tuition, and fees associated with an allowable work activity, provided:
 - (1) Other educational fund sources have been explored and are exhausted; and
 - (2) The participant is a member of a household and eligible for assistance at the time funds are paid or obligated.
 - i. Assistance with payment for professional license fees and professional examination fees, if there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
 - j. Assistance with expenses determined by the employment contractor to be reasonable and necessary for the individual to engage in employment or participate in employment interviews, including transportation, lodging, grooming, and clothing.
4. The maximum expenditures permitted for supportive services and transitional supportive services are limited to amounts and availability as the department may by order determine.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

CHAPTER 75-02-13
FAMILY PAID CAREGIVER PROGRAM

Section

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75-02-13-01. Definitions.

1. "Applicant" means an individual seeking services under this chapter.
2. "Application" means a request in the form and manner prescribed by the department signed by an applicant or by a legally responsible individual on behalf of the applicant.
3. "Department" means the department of health and human services.
4. "Extraordinary care" means care exceeding the range of activities that a legally responsible individual would ordinarily perform in the household on behalf of the applicant or eligible participant without extraordinary medical or behavioral needs and is necessary to assure the health and welfare and to avoid institutionalization of the applicant or eligible participant in need of care.
5. "Family caregiver" means a legally responsible individual who lives with and provides daily care to an eligible participant.
6. "Legally responsible individual" means an individual who has a duty under law to care for the applicant or eligible participant, including a biological or adoptive parent, nonentity custodian, guardian, or a spouse.
7. "Medicaid 1915(c) waiver" means the approved autism spectrum disorder waiver, medically fragile waiver, children's hospice waiver, or traditional individuals with intellectual disabilities and developmental disabilities home and community-based services waiver.

History: Effective April 1, 2024.

General Authority: NDCC 50-24.1-47

Law Implemented: NDCC 50-24.1-47

75-02-13-02. Application - Eligibility.

1. An applicant or legally responsible individual may apply to the department to participate in the family paid caregiver program.
2. A completed application must be submitted to the department upon initial application and annually thereafter.
3. The date of application is the date a completed application is received by the department.
4. The department may declare an application withdrawn if the applicant or legally responsible individual fails to submit all required documentation or information within thirty days of the department's notification to the applicant or legally responsible individual that the application is incomplete.
5. An applicant is eligible to become an eligible participant if all the following conditions are met:
 - a. The applicant is enrolled in a Medicaid 1915(c) waiver;

- b. The applicant's support needs are not otherwise compensated for through other services available through a Medicaid 1915(c) waiver or Medicaid state plan;
- c. The applicant's assessed needs meet extraordinary care; and
- d. The requirements of section 75-02-13-03 are met.

History: Effective April 1, 2024.

General Authority: NDCC 50-24.1-47

Law Implemented: NDCC 50-24.1-47

75-02-13-03. Administration.

- 1. Eligible participants supported under this chapter may not exceed one hundred twenty individuals or the limits of legislative appropriations for the family paid caregiver program.
- 2. The department shall review completed applications in the order received and shall only approve applications within the limits of legislative appropriations for the family paid caregiver program.
- 3. Upon receiving the application, the department shall request that the applicant or legally responsible individual complete the department-approved assessment to determine if the applicant meets the extraordinary care requirement.
- 4. Upon approval of application, the department shall issue an authorization not to exceed six months. The department may reissue an authorization for an additional six months.
- 5. The department shall conduct face-to-face visits in the eligible participant's home at a minimum of every six months.
- 6. If the family caregiver has not submitted a request for payment for thirty calendar days, the department shall inform the eligible participant or legally responsible individual that if an additional thirty calendar days pass without a request for payment, the service may be terminated due to inactivity.
- 7. The department shall deny an application if approval would exceed the limits of legislative appropriations for the family paid caregiver program or if the applicant does not meet the eligibility requirements pursuant to section 75-02-13-02. The department shall terminate an authorization if the funding awarded is exhausted or due to inactivity. The department shall revoke an authorization if the eligible participant is no longer eligible pursuant to section 75-02-13-02 or if the department is unable to conduct face-to-face visits due to refusal.
- 8. Funds are not available until the department approves the application and issues an authorization.

History: Effective April 1, 2024.

General Authority: NDCC 50-24.1-47

Law Implemented: NDCC 50-24.1-47

75-02-13-04. Denials - Revocations - Terminations - Appeals.

- 1. The department shall issue a written notice to an applicant, eligible participant, or a legally responsible individual if the department denies, revokes, or terminates.
- 2. The department shall include the reason for the denial, revocation, or termination and shall inform the applicant, eligible participant, or legally responsible individual of the right to appeal the denial, revocation, or termination, if applicable.

3. An application may be denied, revoked, or terminated under the terms and conditions of this chapter or North Dakota Century Code section 50-24.1-47.
4. An applicant, eligible participant, or legally responsible individual may appeal a denial, revocation, or termination of an application or authorization under this chapter. An appeal under this section must be made in writing within thirty days of the date of the notice issued under this section. The applicant, eligible participant, or legally responsible individual shall submit the written request for an appeal and hearing under chapter 75-01-03 and North Dakota Century Code chapter 28-32 to the appeals supervisor for the department.
5. An applicant, eligible participant, or legally responsible individual may not appeal:
 - a. A denial, revocation, termination, or reduction in payment resulting from exhausting or exceeding the limits of legislative appropriations for the family paid caregiver program;
 - b. A denial, revocation, or termination of an application or authorization under this chapter if the applicant is no longer eligible for a Medicaid 1915(c) waiver at the time of the denial, revocation, or termination; or
 - c. An application that has been withdrawn.
6. A family caregiver is not entitled to payment upon notice of revocation or termination to the eligible participant or legally responsible individual or during an appeal.

History: Effective April 1, 2024.

General Authority: NDCC 50-24.1-47

Law Implemented: NDCC 50-24.1-47

CHAPTER 75-03-07

75-03-07-04. In-home registration and standards.

1. An application for a registration document must be submitted to the department ~~or its authorized agent~~ wherein the applicant proposes to provide in-home services. Application must be made in the form and manner prescribed by the department.
2. An applicant for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicant:
 - a. Is at least eighteen years of age.
 - b. Is physically, cognitively, socially, and emotionally healthy and will use mature judgment when making decisions impacting the quality of child care.
 - c. Shall devote adequate time and attention to the children in the applicant's care and provide an environment that is physically and socially adequate for children.
 - d. Shall participate in specialized training related to child care if provided by or approved by the department.
 - e. Shall complete one hour of department-approved training annually on ~~sudden infant death prevention~~ safe sleep prior to in-home provider having unsupervised access to infants and one hour on mandated reporter of suspected child abuse or neglect.
 - f. Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's care.
 - g. Shall provide proper care, supervision, and protection for children in the applicant's care. Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
 - h. Shall provide for a safe and sanitary environment while children are in care.
 - i. May not use or be under the influence of any illegal drugs or alcoholic beverages while children are in care.
 - j. May not leave children without supervision.
 - k. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
 - (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
 - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within

sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.

- (3) A child may not be punished for lapses in toilet training.
- (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
- (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
- (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
- (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
- (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
- (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
- (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

I. Shall discuss methods of discipline and child management with the parent or parents.

3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
4. In-home providers shall ensure safe care for the children receiving services in their care. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by the applicant or in-home provider, that decision has a direct bearing on the applicant's or in-home provider's ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or in-home provider. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.
5. An in-home provider may provide early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.

History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 2011; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

75-03-07-06. Denial or revocation of in-home registration.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the registration as listed in section 75-03-07-04.
 2. A fraudulent or untrue representation is grounds for revocation or denial.
 3. a. The applicant or in-home provider may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2 sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
 - b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's or provider's ability to serve the public in a capacity as a provider.
 - c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. An in-home provider shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse ~~a person~~ an individual from

providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~ **an individual** is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.

5. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 2011; amended effective April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-07.1

75-03-07.1-02. Self-declaration standards - Application.

1. An applicant for a self-declaration document shall submit the application to the department ~~or its authorized agent~~ in which the applicant proposes to provide early childhood services. An application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, and an application for a fingerprint-based criminal history record check for the applicant and emergency designee, must be made in the form and manner prescribed by the department.
2. The current self-declaration document must be displayed prominently in the premises to which it applies.
3. A provisional self-declaration document may be issued:
 - a. The department may issue a provisional self-declaration document although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
 - b. A provisional self-declaration document must:
 - (1) State that the provider has failed to comply with all applicable standards and rules of the department;
 - (2) State the items of noncompliance;
 - (3) Expire at a set date, not to exceed six months from the date of issuance; and
 - (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or ~~operator~~provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
 - c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:
 - (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and
 - (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
 - d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the provider.
 - e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the provider to all rights and privileges afforded the provider of an unrestricted self-declaration document.
 - f. The provider shall display prominently the provisional self-declaration document and agreement.

- g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.
4. The provider shall be directly responsible for the care, supervision, and guidance of the children.
 - a. The provider:
 - (1) Must be at least eighteen years of age;
 - (2) Shall provide an environment that is physically and socially adequate for the children; and that the provider is of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - (3) Shall devote adequate time and attention to the children in the provider's care;
 - (4) Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the provider's care;
 - (5) Shall provide proper care and protection for children in the provider's care;
 - (6) May not use or be under the influence of, and will not allow any household member or emergency designee to use or be under the influence of any illegal drugs or alcoholic beverages while caring for children;
 - (7) May not leave children without supervision;
 - (8) Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs;
 - (9) Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 - (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
 - (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually;
 - (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter;
 - (13) Shall certify completion of a department-approved basic child care course within ninety days of being approved as a provider;
 - (14) Shall be currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association,

American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;

- (15) Shall be currently certified in pediatric first aid by a program approved by the department;
- (16) Shall complete a minimum of three hours of department-approved training annually, including one hour on ~~sudden infant death prevention~~safe sleep prior to provider providing care to infants and one hour on mandated reporter of suspected child abuse or neglect. The same training courses may be counted toward self-declaration annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~safe sleep and mandated reporter annual training;
- (17) Shall ensure the emergency designee is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
- (18) Shall ensure the emergency designee is currently certified in pediatric first aid by a program approved by the department;
- (19) Shall ensure the emergency designee certifies completion of a department-approved basic child care course within ninety days;
- (20) Shall ensure that the emergency designee completes ~~one hour of required~~ department-approved training annually, including one hour on ~~sudden infant death prevention~~safe sleep prior to emergency designee providing care to infants and ~~annually thereafter~~one hour on mandated reporter of suspected child abuse or neglect;
- (21) Shall release a child only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian;
- (22) Shall report to the department ~~or its authorized agent~~ within twenty-four hours:
 - (a) A death or serious accident or illness requiring hospitalization of a child while in the care of the self-declaration provider or attributable to care received by the self-declaration provider;
 - (b) An injury to any child which occurs while the child is in the care of the self-declaration provider and which requires medical treatment;
 - (c) Poisonings or errors in the administration of medication;
 - (d) Closures or relocation of self-declaration program due to emergencies; and
 - (e) Fire that occurs or explosions that occur in or on the premises of the self-declaration provider;
- (23) Shall secure written permission and follow proper instructions as to the administration of medication.

- (a) Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage and labeled with the child's name and date.
 - (b) The provider shall store medications in an area inaccessible to children.
 - (c) Medications stored in a refrigerator must be stored collectively in a spillproof container.
 - (d) The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record; and
- (24) Shall notify parents, legal custodians, or guardians of child's exposure to a presumed or confirmed reportable infectious disease. b. The provider shall ensure that discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint such as holding. A child may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a self-declaration document.
- (1) A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, struck, mechanically restrained, or physically maltreated by the provider, emergency designee, household member, or any other adult in the residence.
 - (2) Authority to discipline may not be delegated to or be administered by children.
 - (3) Separation, when used as discipline, must be appropriate to the child's development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. A child may not be isolated in a locked room or closet.
 - (4) A child may not be punished for lapses in toilet training.
 - (5) A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion when addressing a child or in the presence of a child.
 - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (7) A provider may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
 - (8) A provider may not use deprivation of snacks or meals as a form of discipline or punishment.
 - (9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

- c. The provider shall ensure that a working smoke detector is properly installed and in good working order on each floor used by children.
- d. The provider shall ensure that a fire extinguisher that is inspected annually is properly installed, is in good working order, and is located in the area used for child care.
- e. The provider shall ensure that a working telephone is located in the location used for child care. Current emergency numbers for parents and first responders must be posted.
- f. When transportation is provided by a provider, children must be protected by adequate supervision, safety precautions, and liability insurance.
 - (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
 - (2) A child must not be left unattended in a vehicle.
- g. Aquatic activities:
 - (1) The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the [self-declaration](#) program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of the children participating in aquatic activities, and additional safety precautions to be taken.
 - (2) The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

5. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.

[6. The provider shall ensure the self-declaration program has a drinking water supply from an approved community water system or from a source tested and approved annually by the department of environmental quality.](#)

~~6.7.~~ If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require that the individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.

~~7.8.~~ A self-declaration document is only effective for one year.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-06. Denial or revocation of self-declaration document.

- 1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application as listed in section 75-03-07.1-02.
- 2. A fraudulent or untrue representation is grounds for revocation or denial.

3. a. The applicant, self-declaration provider, emergency designee, and household members may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
 - b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, or emergency designee's ability to serve the public in a capacity as a provider or emergency designee.
 - c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each emergency designee submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse ~~a person~~ an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~ an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
 5. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
6. A provider shall ensure safe care for the children receiving services in the provider's residence. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by an applicant, provider, emergency designee, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked.
- a. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, or household member, the applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's, or emergency designee's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the applicant or provider.
 - b. Each applicant, provider, and emergency designee shall complete, and the provider shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form no later than the first day of employment.
 - c. Household members age twelve and older shall complete, and the provider shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the ~~child care~~self-declaration program.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08, 50-11.1-09

Law Implemented: NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

75-03-07.1-07. Minimum sanitation requirements.

1. The provider shall operate according to the recommendations by the federal centers for disease control and prevention, including washing hands, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and single-use or individually designated cloth towels or paper towels must be available at each sink. Clean towels must be provided at least daily.
2. The provider shall ensure that the residence, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The provider shall establish routine cleaning procedures to protect the health of the children.

3. Pets and animals.

- a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children and may approve additional pets that do not pose a health or safety risk to children.
- b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The provider shall ensure parents are aware of the presence of pets and animals in the ~~child-care~~[self-declaration program](#).
- d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. The provider shall ensure that all contact between pets and children is closely supervised. The provider shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
- h. The provider shall ensure that the ~~child-care~~[self-declaration program](#) is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

History: Effective January 1, 2011; amended effective April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-08. Infant care.

1. **Environment and interactions.**

- a. A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- b. The provider shall ensure that each infant receives positive stimulation and verbal interaction such as being held, rocked, talked with, or sung to.
- c. The provider shall respond to comfort an infant's or toddler's physical and emotional distress:
 - (1) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (2) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

- d. The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- e. The provider shall take children outdoors or to other areas within the ~~child-~~[care-self-declaration program](#) for a part of each day to provide some change of physical surroundings and to interact with other children.
- f. The provider shall ensure that infants are not shaken or jostled.
- g. The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- h. The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

2. **Feeding.**

- a. The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider in writing.
- b. The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. The provider shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.
- c. The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- d. The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
- e. The provider shall ensure that an infant is not fed by propping a bottle.
- f. The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- g. The provider shall be within sight and hearing range of an infant during the infant's feeding or eating process.

3. **Diapering.**

- a. The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care if children requiring diapering are in care.
- b. The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
- c. Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- d. The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the child care.

4. **Sleeping.**

- a. The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- b. The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- c. The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
- d. Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- e. The provider shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while the infant is sleeping or preparing to sleep.
- f. The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- g. The provider shall check on sleeping infants regularly and have a monitor in the room with sleeping infants, unless the provider or an emergency designee is in the room with the infants while the infants are sleeping.

History: Effective January 1, 2011; amended effective January 1, 2013; April 1, 2016; April 1, 2018; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-10. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 24 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, paragraph 5 or 7 of subdivision a of subsection 3 of section 75-03-07.1-02, subdivision b of subsection 3 of section 75-03-07.1-02, or subsection 4 of section 75-03-07.1-02, or section 75-03-07.1-08, within twenty-four hours.
 - b. For a violation of subdivision g or h of subsection 1 of North Dakota Century Code section 50-11.1-17 or all other deficiencies of chapter 75-03-07.1, within twenty days.
2. All periods of correction begin on the date of the receipt of the correction order by the provider.
3. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.

4. The provider shall furnish a written notice to the department ~~or its authorized agent~~ upon completion of the required corrective action. The correction order remains in effect until the department ~~or its authorized agent~~ confirms the corrections have been made.
5. The provider shall notify the parent of each child receiving care at the residence and each emergency designee how to report a complaint or suspected rule violation.
6. Within ~~threeten~~ thirteen business days of ~~the receipt~~ mailing or within three days of electronic transmission of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.
7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, the department shall mail or send by electronic mail a notice of noncompliance with the correction order ~~must be mailed by certified mail~~ to the provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
8. Refutation process for a correction order:
 - a. A self-declared provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department shall respond to written refutations within five business days of receipt.

History: Effective January 1, 2011; amended effective January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-08

CHAPTER 75-03-08

75-03-08-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
3. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
4. "Attendance" means the total number of children present at any one time at the family child care.
5. "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.
6. "Emergency designee" means an individual designated by the provider to be a backup staff member for emergency assistance or to provide substitute care.
7. "Infant" means a child who is younger than twelve months of age.
8. "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
9. ~~"Provider" means owner or operator of a family child care.~~
- ~~10.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~11.~~10. "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-08-07. Application for and nontransferability of family child care license.

1. An application for a license must be submitted to the department ~~or its authorized agent~~ in which the family child care is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only for the premises indicated on the license. A new application for a license must be filed upon change of provider or location.
3. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2018; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-08-08.1. Duties of the provider.

1. A provider shall be currently certified:
 - a. In infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department; and
 - b. In pediatric first aid by a program approved by the department.
2. The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.
3. A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. The provider shall report to the department ~~or its authorized agent~~ within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;
 - b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of [the family](#) child care ~~programs~~ due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the family child care.
5. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.
6. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
7. The provider may select an emergency designee.
8. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
9. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
10. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.

11. The provider shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-10. Minimum qualifications of providers.

A provider shall:

1. Be at least eighteen years of age;
2. Certify completion of a department-approved basic child care course within ninety days of licensure;
3. Certify completion of a minimum of nine hours of department-approved training related to child care ~~every licensing year~~ annually, including one hour on mandated reporter of suspected child abuse or neglect. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~ safe sleep and mandated reporter annual training; and
4. Certify completion of one hour of department-approved ~~sudden infant death prevention~~ safe sleep training prior to provider providing care to infants and annually thereafter.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;
3. Certify completion of a department-approved basic child care course within ninety days of employment;
4. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;

5. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department;
6. Certify annual completion of one hour of department-approved mandated reporter of suspected child abuse or neglect training;
- ~~6.7.~~ Certify completion of one hour of department-approved ~~sudden infant death prevention~~safe sleep training prior to staff member providing care to infants and annually thereafter; and
- ~~7.8.~~ Receive orientation ~~related to the family child care policies, emergency procedures, special needs of children in care, and child care activities~~program during the first week of employment. The orientation must be documented on an orientation certification form and must address the following:
 - a. Emergency health, fire, and safety procedures;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition instructions regarding the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the family child care;
 - f. Rules and policies of the family child care; and
 - g. Child abuse and neglect reporting laws.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-14. Minimum requirements of the facility.

1. The family child care must contain adequate space, indoors and out, for the daily activities of the children. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. ~~Operators~~Providers who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child are exempt from the outdoor space requirement.
2. The family child care must be clean and maintained to protect the health and safety of children. The family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. Garbage must be regularly removed.
3. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The provider shall ensure that the family child care is equipped with one properly installed smoke detector located in each sleeping area used by the children, and one properly installed

smoke detector and one fire extinguisher per level. Properly installed means installed according to manufacturer's or fire inspector's directions.

5. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
6. The provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved annually by the ~~public health division of the~~ department of ~~health and human services~~environmental quality.
7. The provider shall ensure that each child has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, and free from drafts.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. The provider shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
11. The provider shall ensure that exit doorways and pathways are not blocked.
12. The provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. The family child care must have an indoor bathroom with a minimum of one sink and one flush toilet.
14. The family child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. The family child care must meet the local minimum fire and safety standards. The provider shall obtain a fire inspection prior to licensure and annually thereafter. Any inspection fees are the provider's responsibility. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the department ~~or its authorized agent~~. If the fire, safety, health, or sanitation environment appears questionable, the department ~~or its authorized agent~~ may require the provider to obtain additional inspections at the cost of the provider. The provider shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the family child care has been inspected and that the inspector is satisfied that the family child care meets minimum fire and safety standards.

16. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
17. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-19. Admission procedures.

1. The provider shall request a preadmission visit with the child and the child's parents to acquaint the child and the parent with the family child care and its surroundings, the other children, and the provider.
2. The provider shall inform parents about the [family](#) child care ~~program~~, places and times of special activities outside the family child care, policies, and emergency procedures, and shall discuss information concerning the child to identify and accommodate the child's needs. Written policies must include:
 - a. An explanation of how accidents and illnesses will be handled;
 - b. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - c. The process for a parent or staff member to report a complaint, a suspected licensing violation, or suspected child abuse or neglect;
 - d. Hiring practices and personnel policies for staff members;
 - e. Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
 - f. Procedure for accountability when a child fails to arrive as expected at the [family](#) child care; and
 - g. Transportation procedures, if the provider provides transportation.
3. The provider shall notify parents of the payment rates and the time of payment.
4. The provider shall provide parents with unlimited access and opportunities to observe their children at any time their children are in care. This does not prohibit a provider from locking the doors of the family child care while children are in care.
5. The provider shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
6. The provider shall ensure that children do not depart from the [family](#) child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the [family](#) child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the [family](#) child care premises.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08

75-03-08-21.1. Minimum sanitation and safety requirements.

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.
3. The provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
4. The provider shall ensure at least one department-approved first-aid kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.
5. The provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
6. If children in care require medication, the provider shall secure written permission and follow proper instructions as to the administration of medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage and labeled with the child's name and date.
 - b. The provider shall store medications in an area inaccessible to children.
 - c. Medications stored in a refrigerator must be stored collectively in a spillproof container.
 - d. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
7. The provider shall establish practices in accordance with guidance obtained through consultation with local health unit authorities or authorities from the public health division of the department ~~of health and human services~~ regarding the exclusion and return of children with infectious or communicable conditions. The provider may obtain this guidance directly or through current published materials regarding exclusion and return to the family child care. The provider shall notify the parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease.
8. The provider may release a child only to the child's parent or individual who has been authorized by the child's parent.
9. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.

10. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
11. The provider shall ensure that children receive proper supervision when playing outdoors.
12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.
13. Pets and animals.
 - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
 - h. The provider shall ensure that the family child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the family child care and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by the children must be approved annually by the local health unit.
16. Aquatic activities:
 - a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

17. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.
18. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
 - a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-22. Records.

1. A copy of this chapter must be kept on the premises and available to staff members at all times.
2. The provider shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents or legal guardian authorizing emergency medical care;
 - c. Names and telephone numbers of individuals authorized to take the child from the family child care;
 - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and

- e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity. This assessment shall be completed annually.
3. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
- a. ~~Authorized agent and department~~ Department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The family child care shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-27. Effect of conviction on licensure and employment.

- 1. An applicant or provider may not be, and a family child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, staff member, or household member and any child cared for by the family child care, a provider, emergency designee, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, provider, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or

imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff members.
5. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse ~~a person~~ an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~ an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
6. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's family child care. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or

a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.

2. Each applicant, provider, emergency designee, and staff member in the family child care shall complete, and the provider shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form no later than the first day of employment.
3. Household members age twelve and older shall complete, and the provider shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-29. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 8 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, section 75-03-08-04, subsection 4 or 11 of section 75-03-08-08.1, section 75-03-08-09, subsection 2 or 9 of section 75-03-08-14, section 75-03-08-23, or subsection 1 of section 75-03-08-24, within twenty-four hours.
 - b. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
 - c. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - d. For all other violations, within twenty days.
2. All periods for correction begin on the date of receipt of the correction order by the provider.
3. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the department ~~or its authorized agent~~ upon completion of the required corrective action. The correction order remains in effect until the department ~~or its authorized agent~~ confirms the corrections have been made.

5. Within ~~threeten~~ business days of ~~the receipt~~mailing or within three days of electronic transmission of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child care until the violation has been corrected or for five days, whichever is longer.
6. A family child care ~~program~~ that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the ~~program~~family child care has not corrected a violation identified in the correction order, the department shall mail or send by electronic mail a notice of noncompliance with the correction order ~~must be mailed by certified mail~~ to the ~~program~~provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a family child care ~~program~~ receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.
8. Refutation process for a correction order:
 - a. A provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department shall respond to written refutations within five business days of receipt.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-09

75-03-09-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
3. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
4. "Attendance" means the total number of children present at any one time at the group child care.
5. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
6. "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
7. "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
8. "Infant" means a child who is less than twelve months of age.
9. "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
10. "Operator" means the ~~individual or governing board who~~ person that has ~~the legal~~ operational responsibility ~~and the administrative authority~~ for the ~~operation of a group child care~~ early childhood program and premises at which the early childhood service operates.
11. "Owner" means the person that has legal responsibility for the early childhood program and premises at which the early childhood service operates.
- ~~11.~~ 12. "Provider" means the group child care owner or operator.
- ~~12.~~ 13. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~13.~~ 14. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-09-07. Application for and nontransferability of group child care license.

1. An application for license must be submitted to the department ~~or its authorized agent.~~ Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of provider or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-09-08. Duties of group child care provider.

1. The provider of a group child care is responsible for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. The provider shall:
 - a. Establish the group child care ~~program~~;
 - b. Apply for a license for the group child care;
 - c. Possess knowledge or experience in management and interpersonal relationships;
 - d. Formulate written policies and procedures for the operation of the group child care. Policies must include:
 - (1) An explanation of how accidents and illnesses will be handled;
 - (2) The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - (3) The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - (4) Hiring practices and personnel policies for staff members;
 - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
 - (6) Procedure for accountability when a child fails to arrive as expected at the group child care; and
 - (7) Transportation procedures, if the provider provides transportation;
 - e. Notify the department ~~or its authorized agent~~ of any major changes in the operation or in the ownership of the group child care, including staff member changes;
 - f. Maintain records of enrollment, attendance, health, and other required records;
 - g. May select an emergency designee;
 - h. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care;

- i. Ensure the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 - j. Ensure preadmission visits for children and their parents are offered so the ~~facility's program~~group child care, fees, operating policies, and procedures can be viewed and discussed;
 - k. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
 - l. Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care. Providing unlimited access does not prohibit a group child care from locking its doors while children are in care;
 - m. Provide parents with the name of the group child care provider, the group child care supervisor, staff members, and the emergency designee;
 - n. Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 - o. Ensure that children do not depart from the group child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the group child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the group child care premises; and
 - p. Ensure that each child is released only to the child's parent, legal custodian, guardian, or individual who has been authorized by the child's parent, legal custodian, or guardian.
2. If the provider is also the group child care supervisor, the provider shall also meet the qualifications of the supervisor in section 75-03-09-10.
 3. The provider shall report to the department ~~or its authorized agent~~ within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the group child care or attributable to care received in the group child care;
 - b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations of the group child care ~~programs~~ due to emergencies; and
 - e. Fire that occurs and explosions that occur in or on the premises of the group child care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-10. Minimum qualifications of group child care supervisor.

1. A group child care supervisor must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
2. The group child care supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education or child development;
 - b. An associate's degree with at least one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
 - c. Current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care;
 - d. Certification from a Montessori teacher training program;
 - e. At least one year of exclusive experience as a self-declaration holder or licensed child care provider with positive references from at least two parents whose children were in the provider's care;
 - f. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year of exclusive experience working with young children, with references from at least two individuals who either had their children in the group child care supervisor's care or instructed the group child care supervisor in child care programming; or
 - g. A minimum of one year of exclusive experience providing care to three or more children, with positive references from at least two parents whose children were in the group child care supervisor's care or a center director or teacher who observed the group child care supervisor's care of children first hand.
3. The group child care supervisor shall certify completion of a minimum of ten hours of department-approved training related to child care annually, including one hour on ~~sudden infant death prevention~~ safe sleep prior to providing care to infants and one hour on mandated reporter of suspected child abuse or neglect. A department-approved basic child care course must be completed within ninety days of employment. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~ safe sleep and mandated reporter annual training.
4. The group child care supervisor must be present in the group child care no less than sixty percent of the time when children are in care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

75-03-09-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

Staff members shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
3. Receive orientation related to the group child care policies, emergency procedures, special needs of children in care, and group child care activities program during the first week of work. The orientation must be documented on an orientation certification form and must address the following:
 - a. Emergency health, fire, and safety procedures;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition instructions of the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the group child care;
 - f. Rules and policies of the group child care; and
 - g. Child abuse and neglect reporting laws;
4. Ensure that at no time a child is placed in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
5. Certify completion of a department-approved basic child care course within ninety days of employment;
6. Certify the staff member's own completion of department-approved training related to child care annually as set forth below:
 - a. A staff member working thirty or more hours per week shall certify a minimum of eight hours of department-approved training annually;
 - b. A staff member working fewer than thirty and at least twenty hours per week shall certify a minimum of six hours of department-approved training annually;
 - c. A staff member working fewer than twenty and at least ten hours per week shall certify a minimum of four hours of department-approved training annually;
 - d. A staff member working fewer than ten hours per week shall certify a minimum of two hours of department-approved training annually;
 - e. An emergency designee is exempt from department-approved annual training, with the exception of training required by subsections 5, and 7, and 8; and

f. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~ safe sleep and mandated reporter annual training; ~~and~~

7. Certify completion of one hour of department-approved ~~sudden infant death prevention~~ safe sleep training prior to staff member providing care to infants and annually thereafter;

8. Certify annual completion of one hour of department-approved mandated reporter of suspected child abuse or neglect training;

~~8-9.~~ Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected;

~~9-10.~~ Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department; and

~~10-11.~~ Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children in care, in pediatric first aid by a program approved by the department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-14. Minimum requirements for facility.

1. The provider shall ensure that the group child care is properly lighted. If the lighting of the group child care appears questionable, the department ~~or its authorized agent~~ may require the provider to obtain additional lights.

2. The provider shall ensure that safe and comfortable arrangements for naps for enrolled children are provided.

a. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.

b. The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.

3. Water supply:

a. The provider shall ensure that the group child care has a drinking supply from a community water system or from a source tested and approved annually by the department of environmental quality.

- b. The group child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
4. Toilet and sink facilities:
 - a. The provider shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff.
 - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
 - c. The provider shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
 - d. The provider shall provide at least one handwashing sink per toilet room facility or diapering area. The provider shall provide sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels near handwashing sinks.
 - e. The provider shall provide safe step stools to allow standard-size toilets and sinks to be used by the children or the provider shall ensure the availability of child-size toilets and sinks.
5. The ~~operator~~provider of a group child care not on a municipal or public water supply or wastewater disposal system shall ensure the group child care's sewage and wastewater system has been approved by the department of environmental quality.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-16. Minimum emergency evacuation and disaster plan.

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed monthly.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2018; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-17. Fire inspections.

1. The provider shall ensure that initial and annual fire inspections are completed by local or state fire authorities for all group child cares in which care is provided. The group child care is responsible for any inspection fee. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the department ~~or its authorized agent~~. If the fire, safety, health, or sanitation environment appears questionable, the department ~~or its authorized agent~~ may require the provider to obtain additional inspections at the cost of the provider.
2. The provider shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the group child care has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards.
3. The provider shall ensure that the group child care is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. Minimum sanitation and safety requirements.

~~1. In facilities other than an occupied private residence and where meals are prepared, the provider shall ensure that the public health division of the department of health and human services conducts an annual inspection. If only snacks or occasional cooking projects are prepared, an inspection by the public health division of the department of health and human services is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent.~~

~~2.~~ The provider shall ensure that the group child care bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.

~~3.~~^{2.} The provider shall ensure that the group child care building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the staff members.

~~4.~~^{3.} Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.

- | ~~5~~.4. The provider shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
- | ~~6~~.5. The provider shall ensure that the group child care ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
- | ~~7~~.6. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
- | ~~8~~.7. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
- | ~~9~~.8. The provider shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks . The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
- | ~~10~~.9. The provider shall ensure that indoor floors and steps are not slippery and do not have splinters. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
- | ~~11~~.10. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
- | ~~12~~.11. The provider shall take steps to keep the group child care free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care. Insect repellent may be applied outdoors on children with parental permission.
- | ~~13~~.12. The provider shall ensure that exit doorways and pathways are not blocked.
- | ~~14~~.13. The provider shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
- | ~~15~~.14. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.
- | ~~16~~.15. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
- | ~~17~~.16. A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint,

varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.

~~18.17.~~ The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes, are individually identified and stored in a sanitary manner.

~~19.18.~~ Pets and animals.

- a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
- b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.
- d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
- h. The provider shall ensure that the group child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

~~20.19.~~ Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care and shall empty, clean, and sanitize wading pools daily.

~~21.20.~~ All swimming pools used by children must be approved annually by the local health unit.

~~22.21.~~ Aquatic activities:

- a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the ~~program~~group child care may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

- b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

23.22. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:

- a. Pillows and mattresses have clean coverings.
- b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
- c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
- d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
- e. That cots, mats, and cribs are single occupancy.
- f. Each bed, cot, or mat has sufficient blankets available.
- g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
- h. Provide separate storage for personal blankets or coverings.
- i. That mattresses and sheets are properly fitted.

History: Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-22. Records.

1. The provider shall keep a copy of this chapter on the premises of the group child care and shall make it available to staff members at all times.
2. The provider shall maintain the following records:
 - a. The child's full name, birthdate, and current home address;
 - b. Legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the group child care;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and

- g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
- 3. The provider must verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
- 4. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. The ~~authorized agent and~~ department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the children's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent. The group child care shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-24. Specialized types of care and minimum requirements.

- 1. Infant care.
 - a. Environment and interactions.
 - (1) A group child care serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
 - (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, or emergency designee, such as being held, rocked, talked with, or sung to.
 - (3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly to comfort an infant's or toddler's physical and emotional distress.
 - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
 - (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to interact with other children.
 - (6) The provider shall ensure that infants are not shaken or jostled.
 - (7) The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
 - (8) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.
- b. Feeding.
- (1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider in writing.
 - (2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.
 - (3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
 - (4) The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
 - (5) The provider shall ensure that an infant is not fed by propping a bottle.
 - (6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
 - (7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.
- c. Diapering.
- (1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the group child care if children requiring diapering are in care.
 - (2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
 - (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
 - (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the group child care.

d. Sleeping.

- (1) The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while an infant is sleeping or preparing to sleep.
- (6) A staff member shall check on sleeping infants regularly and have a monitor in the room with the sleeping infants, unless a staff member is in the room with the infants while the infants are sleeping.

2. Night care.

- a. Any group child care offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.
- c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.
- d. The provider shall ensure that children under the age of six are supervised directly when bathing.
- e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available.
- f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.
- g. For a group child care not operating out of an occupied private residence, staff members responsible for caring for or teaching children must be awake and within hearing range during sleeping hours to provide for the needs of children and to respond to an emergency.

3. Drop-in group child care.
 - a. If a group child care serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the programgroup child care and to maintain the proper staff member to child ratio.
 - b. The provider shall ensure that the program reflects the individual needs of the children who are provided drop-in care.
 - c. The provider shall ensure that records secured comply with all enrollment requirements contained in section 75-03-09-22.
 - d. The provider shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the group child care, its equipment, and the staff members.
 - e. A group child care may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care to exceed the total number of children for which the group child care is licensed.
4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:
 - a. Subsections 4 and 5 of section 75-03-09-20, subsections 6 and 7 of section 75-03-09-21, subdivision f of subsections 2 and 3 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.
 - b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-26. Minimum provisions regarding emergency care for children.

The group child care must have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. The provider shall ensure that parents of enrollees are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the group child care;

7. Require written permission to dispense medication and proper instructions for the administration of medication obtained from the parent of a child in the group child care who requires medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date.
 - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container.
 - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. The provider shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the group child care or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary;
9. Identify a source of emergency health services available to the group child care, including:
 - a. A prearranged plan for emergency medical care in which the parent of each enrolled child is advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent or emergency contact is notified;
10. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or authorities from the public health division of the department ~~of health and human services~~ regarding the exclusion and return of children with infectious or communicable conditions. The ~~operator~~ ~~provider~~ may obtain this guidance directly or through current published materials regarding exclusion and return to the group child care;
11. Require that the group child care ~~operator~~ ~~provider~~ inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, and immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made part of the child's record; and
12. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-27. Effect of conviction on licensure and employment.

1. An applicant or provider may not be, and a group child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care, a provider, emergency designee, group child care supervisor, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a group child care applicant, provider, or group child care supervisor, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.
5. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each staff member submits an

application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse ~~a person~~ an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~ an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.

6. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-09-28. Child abuse and neglect decisions.

1. ~~A~~ An operator and provider shall ensure safe care for the children receiving services in the provider's group child care. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, operator, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's, operator's, or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, operator, provider, emergency designee, staff member, or household member, the applicant, operator, or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, provider's, emergency designee's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.
2. Each applicant, operator, provider, emergency designee, and staff member in the group child care shall complete, and the provider shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form no later than the first day of employment.
3. Household members age twelve and older shall complete, and the provider shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background

check form at the time of application or relicensure or upon obtaining residence at the location of the group child care.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-29. Correction of violations.

1. Within ~~threeten~~ business days of ~~the receipt~~ [mailing or three days of electronic transmission](#) of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the ~~faeility~~ [group child care](#) until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-09-04; subdivision i of subsection 1 of section 75-03-09-08; section 75-03-09-09; subsection 4 or 8 of section 75-03-09-12; subsection 3, 6, 9, or 10 of section 75-03-09-18; section 75-03-09-23; or subsection 1 of section 75-03-09-24, within twenty-four hours;
 - b. For a violation requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the provider.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
5. The provider shall furnish written notice to the department ~~or its authorized agent~~ upon completion of the required corrective action. The correction order remains in effect until the department ~~or its authorized agent~~ confirms the corrections have been made.
6. At the end of the period allowed for correction, the department ~~or its authorized agent~~ shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department ~~or its authorized agent~~ shall mail [or send by electronic mail](#) a notice of noncompliance with the correction order ~~by certified mail~~ to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

7. If a group child care receives more than one correction order in a single year, the department ~~or its authorized agent~~ may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.
8. Refutation process for a correction order:
 - a. A provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department shall respond to written refutations within five business days of receipt.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2018; July 1, 2020; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-10

75-03-10-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
3. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
4. "Attendance" means the total number of children present at any one time at the facility.
5. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
6. "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
7. "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
8. "Infant" means a child who is less than twelve months of age.
9. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
10. "Operator" means the ~~individual or governing board who~~ person that has ~~the legal~~ operational responsibility ~~and the administrative authority~~ for the ~~operation of a child care center~~ early childhood program and premises at which the early childhood service operates.
11. "Owner" means the person that has legal responsibility for the early childhood program and premises at which the early childhood service operates.
- ~~11.~~ 12. "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~12.~~ 13. "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
- ~~13.~~ 14. "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-10-04. Effect of licensing and display of license.

1. The issuance of a license to operate a child care center is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children who may be cared for by the center. The child care center may not admit a greater number of children than the license allows.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-06. Provisional license.

1. The department may issue a provisional license for the operation of a child care center although the applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the operatorowner has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operatorowner demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or operatorowner who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the operatorowner.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department may not issue a provisional license if the child care center is not in compliance with section 75-03-10-17 or 75-03-10-18.
7. The operatorowner shall display prominently the provisional license and agreement.

8. The **operatorowner** shall provide parents written notice that the **child care** center is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-10-06.1. Restricted license.

The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform parents that the **operatorowner** is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

History: Effective January 1, 2011; amended effective April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-07. Application for and nontransferability of child care center license.

An application for a license must be submitted to the department ~~or its authorized agent~~.

1. An applicant shall submit an application for a license to the department ~~or its authorized agent~~. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and is valid only for the premises that are indicated on the license.
3. An application for a new license must be filed by the **operatorowner** upon change of **operatorowner** or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-10-08. Staffing and group size requirements.

1. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation.
2. a. The operator shall ensure that the **child care** center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the

licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for or teaching children to children in child care centers and maximum group size of children must be:

- (1) For children less than eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of ten children;
 - (2) For children eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of fifteen children;
 - (3) For children three years of age to four years of age, one staff member may care for seven children, a ratio of .14 in decimal form, with a maximum group size of twenty children;
 - (4) For children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty-five children;
 - (5) For children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of thirty children; and
 - (6) For children six years to twelve years of age, one staff member may care for twenty children, a ratio of .05 in decimal form, with a maximum group size of forty children.
- b. When there are mixed-age groups in the same room, the operator shall ensure:
- (1) The maximum group size is consistent with the:
 - (a) Age of the majority of the children; or
 - (b) Highest number of children in the youngest age group;
 - (2) When children age zero to eighteen months are in the mixed-age group, the maximum group size does not exceed ten children;
 - (3) The mixed-age group does not exceed the acceptable ratio pursuant to subdivision d of subsection 2 of section 75-03-10-08 and the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08; and
 - (4) If the mixed-age group contains the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08, the mixed-age group may only contain additional older children.
- c. When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

3. If a child with special needs is admitted to the child care center, the child's developmental age level must be used to determine into which age group the child should be placed for determining child to staff ratios.
4. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the child care center.
5. An operator licensed for at least two years may apply for a waiver of the required ratio and maximum group size, not to exceed .25 decimal point per group. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the operator in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection annually to determine if the circumstances which led to granting the waiver continue to exist.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-10-09. Duties of child care center operator.

The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director and shall delegate appropriate duties to the director:
 - a. The operator shall ensure that the director or a designated acting director is present at the [child care](#) center at least sixty percent of the time when the [child care](#) center is open;
 - b. The operator shall ensure that the individual designated as an acting director meets the qualifications of a supervisor and for an ongoing period of more than thirty days meets the qualifications of a director; and
 - c. The operator shall ensure that when the director and acting director are not present at the center, ~~a person~~ [an individual](#) who meets the qualifications of a supervisor is on duty;
2. ~~Apply for a license for the child care center;~~
- ~~3.~~ Provide an environment that is physically and socially adequate for children;
- ~~4.3.~~ Notify the department ~~or its authorized agent~~ of any major changes in the operation, ownership, or governing body of the child care center, including staff member changes;
- ~~5.4.~~ Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center;
- ~~6.5.~~ Formulate written policies and procedures for the operation of the child care center. Policies must include:
 - a. Hiring practices and personnel policies for staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;

- d. Children's activities, care, and enrollment;
 - e. The responsibilities and rights of staff members and parents;
 - f. An explanation of how accidents and illnesses will be handled;
 - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
 - j. Procedures for accountability when a child fails to arrive as expected at the child care center; and
 - k. Transportation procedures, if the operator provides transportation;
- ~~7.6.~~ Maintain records of enrollment, attendance, health, and other required records;
 - ~~8.7.~~ May select an emergency designee;
 - ~~9.8.~~ Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the child care center;
 - ~~40.9.~~ Ensure that parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program;
 - ~~41.10.~~ Ensure that parents of enrolled children:
 - a. Are advised of the child care center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
 - b. Receive written notice of the effective date, duration, scope, and impact of any significant changes in the child care center's services; and
 - c. Receive notice that they may request written daily reports for their child, including details regarding eating, napping, and diapering;
 - ~~42.11.~~ Ensure that the child care center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 - ~~43.12.~~ Ensure that the child care center has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or otherwise unable to be on duty;
 - ~~44.13.~~ Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
 - ~~45.14.~~ Provide parents with unlimited access and opportunities for parents to observe their children while in care, and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a child care center from locking its doors while children are in care;
 - ~~46.15.~~ Provide parents, upon request, with progress reports on their children;

- | ~~47.16.~~ Report immediately, as a mandatory reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
- | ~~48.17.~~ Ensure that staff members responsible for caring for or teaching children under the age of eighteen are supervised by an adult staff member;
- | ~~49.18.~~ Meet the qualifications of the director set forth in section 75-03-10-10, if the operator is also the director;
- | ~~20.19.~~ Report to the department ~~or its authorized agent~~ within twenty-four hours:
 - a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;
 - b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations of the child care ~~programs~~center due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the child care center;
- | ~~24.20.~~ Ensure that children do not depart from the child care center premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care center premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care center premises; and
- | ~~22.21.~~ Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-10. Minimum qualifications of child care center director.

A director shall:

1. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;
2. Possess knowledge or experience in management and interpersonal relationships;
3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education or child development;
 - b. A bachelor's degree with at least six months of experience in a child care center or similar setting and one of the following:

- (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
- c. An associate's degree in the field of early childhood education or child development with at least six months of experience in a child care center or similar setting;
- d. An associate's degree with at least one year of experience in a child care center or similar setting and one of the following:
- (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
- e. A teaching certificate in elementary education with at least six months of experience in a child care center or similar setting;
- f. A current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care, with at least one year of experience in a child care center or similar setting; or
- g. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least one of the following:
- (1) Eight semester hours or twelve quarter hours of department-approved child development or early childhood education;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department; and
4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care, including one hour on ~~sudden infant death prevention~~safe sleep prior to the director providing care to infants and one hour on mandated reporter of suspected child abuse or neglect. A department-approved basic child care course must be completed within ninety days of employment. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~safe sleep and mandated reporter annual training.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11.1. Minimum qualifications of child care center supervisor.

A supervisor shall:

1. Be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
2. Have a demonstrated ability in working with children;
3. Hold at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development;
 - b. Current certification as a child development associate or successful completion of a department-approved diploma program with an emphasis in early childhood or child care;
 - c. Certification from a Montessori teacher training program; or
 - d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting;
4. Possess knowledge and experience in building and maintaining interpersonal relationships;
5. Successfully complete a department-approved basic child care course within ninety days of employment; and
6. Successfully complete a minimum of thirteen hours of department-approved training related to child care each year, and annually thereafter. The supervisor shall certify completion of one hour of department-approved ~~sudden infant death prevention~~safe sleep training before providing care to infants and ~~annually thereafter~~one hour on mandated reporter of suspected child abuse or neglect. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~safe sleep and mandated reporter annual training.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

1. Staff members:
 - a. Shall be at least fourteen years of age, provided that each staff member under age sixteen has written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07;
 - b. Shall be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - c. Shall certify completion of a department-approved basic child care course within ninety days of employment;
 - d. Shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;

- e. Shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department;
 - f. Shall certify the staff member's own successful completion of the department-approved training related to child care each year, and annually thereafter, as set forth below:
 - (1) If working thirty or more hours per week, certify thirteen hours of department-approved training annually;
 - (2) If working fewer than thirty hours and more than twenty hours per week, certify eleven hours of department-approved training annually;
 - (3) If working fewer than twenty hours and at least ten hours per week, certify nine hours of department-approved training annually;
 - (4) If working fewer than ten hours per week, certify seven hours of department-approved training annually;
 - (5) Completion of one hour ~~on sudden infant death prevention~~ of department-approved safe sleep prior to the staff member providing care to infants;
 - (6) Completion of one hour of department-approved mandated reporter of suspected child abuse or neglect training;
 - (6)(7) The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of ~~sudden infant death prevention~~ safe sleep and mandated reporter annual training; and
 - (7)(8) Substitute staff and emergency designees are exempt from the annual training requirement with the exception of ~~subdivision c of paragraph~~ paragraphs 5 and 6; and
 - g. Shall not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
2. Receive ~~a two-day, onsite~~ orientation to the child care ~~program~~ center during the first week of employment. The director shall document orientation of each staff member responsible for caring for or teaching children on an orientation certification form. The orientation must address the following:
- a. Emergency health, fire, and safety procedures for the child care center;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition ~~problems~~ instructions of the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the child care center;
 - f. Rules and policies of the child care center; and
 - g. Child abuse and neglect reporting laws; and

3. Ensure safe care for children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the department ~~or its authorized agent~~.
2. The operator shall ensure that the child care center is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the child care center has been inspected and that the inspector is satisfied that the child care center meets minimum fire and safety standards.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that in child care centers licensed for more than thirty children, other than an occupied private residence, where meals are prepared, comply with the public health division of the department ~~of health and human services conducts an annual inspection~~ child care food service establishment license requirements pursuant to North Dakota Century Code chapter 23-09. If only snacks or occasional cooking projects are prepared, an inspection by the public health division of the department ~~of health and human services~~ is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department ~~or its authorized agent~~.
2. The operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:

- a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, cribs, and portable cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, cribs, and portable cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.
4. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
 5. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.
 6. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
 7. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
 8. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
 9. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
 10. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each

separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
13. The operator shall take steps to keep the child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the child care center. Insect repellent may be applied outdoors on children with written parental permission.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. If the child care center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
16. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
17. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
18. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
19. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
20. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.
21. Pets and animals.
 - a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.

- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
22. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.
23. All swimming pools used by children must be approved annually by the local health unit.
24. Aquatic activities:
- a. The operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the ~~program~~ child care center may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
25. Water supply:
- a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality.
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.
 - c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
26. Toilet and sink facilities:

- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.
 - b. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
 - c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.
 - d. The operator shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
 - e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area.
 - f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.
27. The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the department of environmental quality.
28. Laundry:
- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.
 - b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.
 - c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
 - d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
 - e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.
 - f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].
 - g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the child care center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator may supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of the day.
4. The operator shall serve nutritious meals to children in care during any normal mealtime hour.
5. The operator shall serve snacks to children in care in afterschool child care center programs.
6. When the operator is responsible for providing food to children, menus must be prepared on a weekly or daily basis and made available to the parents, the department ~~or its authorized agent~~, and other appropriate individuals.
7. The operator shall consider information provided by the children's parents as to the children's eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.
8. The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
9. The operator or staff member may encourage children to eat the food served, but the operator or staff member may not coerce or force-feed children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07, 50-11.1-08

75-03-10-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the child care center and shall make it available to staff members at all times.
2. The operator shall maintain the following records:
 - a. The child's full name, birth date, and current home address;
 - b. Legal names of the child's parents and current business and personal telephone numbers where they can be reached;

- c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the child care center;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
 4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. The ~~authorized agent and~~ department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-24. Specialized types of care and minimum requirements.

1. Infant care.
 - a. Environment and interactions.
 - (1) A child care center serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
 - (2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children or

emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.

- (3) A staff member shall respond to comfort an infant's or toddler's physical and emotional distress:
 - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- (4) The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the child care center for a part of each day to provide children with some change of physical surroundings and to allow them to interact with other children.
- (6) The operator shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- (7) The operator shall ensure that infants are not shaken or jostled.
- (8) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

- (1) The operator shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider in writing.
- (2) The operator shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.
- (3) The operator shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- (4) The operator shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
- (5) The operator shall ensure that an infant is not fed by propping the bottle.
- (6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.

- c. Diapering.
 - (1) The operator shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.
 - (2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when needed.
 - (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
 - (4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

- d. Sleeping.
 - (1) The operator shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
 - (2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
 - (3) The operator shall ensure that if an infant falls asleep while not in a crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
 - (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
 - (5) The operator shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while the infant is sleeping or preparing to sleep.
 - (6) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants regularly and that a monitor is in the room with the infants, unless a staff member is in the room with the infants while the infants are sleeping.

- e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

- a. Any child care center offering night care shall provide program modifications for the needs of children and their parents during the night.

- b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's needs.
 - c. The operator shall encourage parents to leave their children in care and pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule.
 - d. The operator shall ensure that children under the age of six are supervised when bathing.
 - e. The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available.
 - f. The operator shall require each child in night care to have night clothing and a toothbrush marked for identification.
 - g. The operator shall ensure that during sleeping hours, staff members are awake and within hearing range to provide for the needs of children and to respond to an emergency.
3. Drop-in child care.
- a. If a child care center serves drop-in children, schoolchildren, or before-school and afterschool children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the ~~program~~child care center and to maintain the proper staff member to child ratio.
 - b. The operator shall ensure that the program reflects the individual needs of the children who are provided drop-in care.
 - c. The operator shall ensure that admission records comply with all enrollment requirements contained in section 75-03-10-22.
 - d. The operator shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the child care center, its equipment, and the staff members.
 - e. A child care center may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.
4. An operator shall ensure that a child care center serving only drop-in care children complies with this chapter, but is exempt from the following provisions:
- a. The maximum group size requirements listed in section 75-03-10-08;
 - b. Subsections 5, 9, 12, 13, 14, 15, and 19 of section 75-03-10-20; subsections 6 and 7 of section 75-03-10-21; subdivision f of subsection 2 of section 75-03-10-22; and subsection 1 of section 75-03-10-25; and
 - c. A child care center serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended

effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-26. Minimum provisions regarding emergency care for children.

The child care center shall have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrollees are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the child care center;
7. Require written permission to dispense medication and proper instructions for the administration of medication obtained from the parent of a child in the child care center who requires medication:
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date;
 - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container;
 - c. The operator shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child; and
 - d. The operator shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the child care center or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought as necessary;
9. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or authorities from the public health division of the department ~~of health and human services~~ implemented regarding the exclusion and return of children with infectious or communicable conditions. The [program operator](#) may obtain this guidance directly or through current published materials regarding exclusion and return to the child care center;

10. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease;
11. Identify a source of emergency health services readily available to the child care center, including:
 - a. A prearranged plan for emergency medical care in which parents of enrollees are advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent is notified;
12. Require information be provided to parents, as needed, concerning child health and social services available in the community; and
13. Require that the child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a child care center may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the child care center, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense other than an offense identified in subdivision a or b, if the department in the case of a child care center applicant, operator, director, or supervisor, or the operator in

the case of an emergency designee, substitute staff, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section before hiring any staff member.
5. An ~~operator~~owner shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The ~~operator~~owner shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse a ~~person~~an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a ~~person~~an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
6. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-10-28. Child abuse and neglect decisions.

An owner and operator shall ensure safe care for the children receiving services in the child care center.

1. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's, owner, or operator's ability to serve the public in a capacity involving the provisions of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, owner, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-29. Correction of violations.

1. Within ~~threeten~~ business days of ~~the receipt~~ mailing or three days of electronic transmission of the correction order, the ~~operator~~ owner shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the ~~operator~~ owner shall post the correction order in a conspicuous location within the child care center until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-10-04 or 75-03-10-08; subsection 12 of section 75-03-10-09; subdivision e of subsection 1 of section 75-03-10-12; subsection 3 of section 75-03-10-12; subsection 3, 6, 9, or 10 of section 75-03-10-18; section 75-03-10-23; or subsection 1 of section 75-03-10-24, within twenty-four hours;

- b. For a violation requiring the hiring of a child care supervisor with those qualifications set forth in section 75-03-10-11.1, or a child care center director with those qualifications set forth in section 75-03-10-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the owner and operator.
 4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operatorowner and a showing that the need for the extension is created by unforeseeable circumstances and the operatorowner has diligently pursued the correction of the violations.
 5. The operatorowner shall furnish a written notice to the department ~~or its authorized agent~~ upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department ~~or its authorized agent~~ shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department ~~or its authorized agent~~ determines that the child care center has not corrected a violation identified in the correction order, the department ~~or its authorized agent~~ shall mail or send by electronic mail a notice of noncompliance with the correction order ~~by certified mail~~ to the child care centerowner and operator. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a child care center receives more than one correction order in a single year, the owner and operator may be referred by the department for consulting services to assist the operatorowner in maintaining compliance and to avoid future corrective action.
 8. Refutation process for a correction order:
 - a. An operatorowner may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department shall respond to written refutations within five business days of receipt.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11

75-03-11-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
3. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
4. "Assistant" means any individual who works directly with children in a preschool under the supervision of a teacher or a director.
5. "Attendance" means the total number of children present at any one time at the facility.
6. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
7. "Director" means an individual responsible for supervising and organizing program activities in a preschool.
8. "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
9. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
10. "Operator" means the ~~individual or governing board who~~ person that has ~~the legal~~ operational responsibility ~~and the administrative authority~~ for the ~~operation of a preschool~~ early childhood program and premises at which the early childhood service operates.
11. ~~"Preschool" means a program licensed to provide early childhood services which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.~~ "Owner" means the person who has legal responsibility for the early childhood program and premises at which the early childhood service operates.
12. "Substitute staff" means staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
13. "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.
14. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11-06. Provisional license.

1. The department may issue a provisional license for the operation of a preschool although the preschool educational facility applicant or **operatorowner** fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the **operatorowner** has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or **operatorowner** demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or **operatorowner** who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the applicant or **operatorowner**.
5. Subject to the exceptions contained in this section, a provisional license entitles the **operatorowner** to all rights and privileges afforded the **operatorowner** of an unrestricted license.
6. The department may not issue a provisional license if the preschool is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The **operatorowner** shall display prominently the provisional license and agreement.
8. The **operatorowner** shall provide parents written notice that the preschool is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11-06.1. Restricted license.

The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;

2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the **operatorowner** is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

History: Effective January 1, 2011; amended effective April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-07. Application for and nontransferability of preschool license.

1. An applicant shall submit an application for a license to the department ~~or its authorized agent~~. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license. An application for a new license must be filed upon change of **operatorowner** or location.
3. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11-08. Duties of preschool operator.

The operator of a preschool is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director, delegate appropriate duties to the director, and shall:
 - a. Ensure that the preschool director or designated acting director is present at the preschool at least sixty percent of the time that the preschool is open;
 - b. Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a preschool director; and
 - c. Ensure that the individual designated as a teacher for more than thirty-two hours per month meets the qualifications of a preschool teacher;
2. ~~Apply for a license for the preschool;~~
- ~~3.~~ Possess knowledge or experience in management and interpersonal relations;
- ~~4.~~3. Notify the department ~~or its authorized agent~~ of any major changes in the operation or in the ownership or governing body of the preschool, including staff member changes;
- ~~5.~~4. Ensure that liability insurance against bodily injury and property damage for the preschool is carried;
- ~~6.~~5. Formulate written policies and procedures for the operations of the preschool. Policies must include:
 - a. Hiring practices and personnel policies for staff members;

- b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment;
 - e. The responsibilities and rights of staff members and parents;
 - f. An explanation of how accidents and illnesses will be handled;
 - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - i. The care and safeguarding of personal belongings brought to the ~~child-care-center~~ preschool by a child or by another on a child's behalf;
 - j. Procedure for accountability when a child fails to arrive as expected at the preschool; and
 - k. Transportation procedures, if the operator provides transportation;
- ~~7-6.~~ 7-6. Maintain records of enrollment, attendance, health, financial, and other required records;
 - ~~8-7.~~ 8-7. Be responsible for all preschool staff members, teachers, preschool assistants, substitute staff members, emergency designees, volunteers, or others who provide services in the preschool;
 - ~~9-8.~~ 9-8. Report immediately, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 - ~~10-9.~~ 10-9. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the preschool;
 - ~~11-10.~~ 11-10. Ensure preadmission visits for children and their parents are offered so the preschool's program, fees, operating policies, and procedures can be viewed and discussed;
 - ~~12-11.~~ 12-11. Ensure that there are signed written agreements with the parents of each child which specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
 - ~~13-12.~~ 13-12. Ensure the preschool is sufficiently staffed at all times to meet the child and staff member ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 - ~~14-13.~~ 14-13. Provide parents, upon request, with progress reports on their children and provide unlimited opportunities for parents to observe their children while in care;
 - ~~15-14.~~ 15-14. Provide parents with the name of the preschool operator, the director, teachers, preschool assistants, staff members, substitute staff members, and the emergency designee;
 - ~~16-15.~~ 16-15. Meet the qualifications of the director set forth in section 75-03-11-08.1 if the operator is also the director;
 - ~~17-16.~~ 17-16. Report to the department ~~or its authorized agent~~ within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the preschool or attributable to care received in the preschool;

- b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
- c. Poisonings or errors in the administering of medication;
- d. Closures or relocations due to emergencies; and
- e. Fire that occurs or explosions that occur in or on the premises of the preschool;

~~48-17.~~ Ensure that children do not depart from the ~~child-care~~preschool premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the ~~child-care~~preschool premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the ~~child-care~~preschool premises; and

~~49-18.~~ Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-10. Duties of a preschool director.

The director, in collaboration with the operator, shall:

1. Implement policies and procedures for maintaining compliance with licensing rules;
2. Maintain required enrollment, attendance, health, and other required records;
3. Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;
4. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of each child at all times so the staff member is capable of intervening to protect the health and safety of the child; ~~and~~
5. Ensure all staff responsible for caring for or teaching children receive orientation to the preschool during the first week of employment. The orientation must be documented on an orientation certification form and must address the following:
 - a. Emergency health, fire, and safety procedures;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition instructions of the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the preschool;

f. Rules and policies of the preschool; and

g. Child abuse and neglect reporting laws; and

6. Perform other duties as delegated by the operator.

History: Effective January 1, 2011; amended effective April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appears questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
2. A staff member or household member may not use or be under the influence of any alcoholic beverages or illegal drugs while children are in care.
3. A staff member may not place a child in an environment that is harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. All staff members responsible for caring for or teaching children shall certify completion of department-approved training related to child care annually.

a. A staff member working thirty or more hours per week shall certify a minimum of thirteen hours of department-approved training annually.

b. A staff member working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually.

c. A staff member working fewer than twenty hours and at least ten hours a week shall certify a minimum of nine hours of department-approved training annually.

d. A staff member working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.

e. A staff member shall complete one hour of department-approved mandated reporter of suspected child abuse or neglect training.

f. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of subdivision e.

g. Substitute staff and emergency designees are exempt from the annual training requirement with the exception of subdivision e.

5. All staff members responsible for caring for or teaching children shall certify completion of a department-approved basic child care course within ninety days of employment.
6. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department.

7. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed for the preschool by local or state fire authorities. The operator shall correct or have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the department ~~or its authorized agent~~.
2. The operator shall ensure that the preschool is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code; or
 - b. The fire inspector's written statement that the preschool has been inspected and that the inspector is satisfied that the preschool meets the minimum fire and safety standards.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that the preschool's bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The operator shall ensure that the preschool's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and staff members.
3. The operator shall ensure that in preschools [licensed for more than thirty children](#), where meals are prepared, [comply with](#) the public health division of the department ~~of health and human services conducts an annual inspection~~ [child care food service establishment license requirements pursuant to North Dakota Century Code chapter 23-09](#). If only snacks or occasional cooking projects are prepared, an inspection by the public health division of the department ~~of health and human services~~ is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department ~~or its authorized agent~~.
4. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable

must be sanitized as much as possible without damaging the integrity or educational value of the item.

5. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. When the preschool is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
6. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
9. The operator shall ensure that elevated areas including stairs and porches have railings and safety gates where necessary to prevent falls.
10. The operator shall take steps to keep the preschool free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool. Insect repellent may be applied outdoors on children with written parental permission.
11. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
12. The operator shall ensure that exit doorways and pathways are not blocked.
13. An operator shall ensure that all preschool buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by children must be approved annually by the local health unit.
16. Aquatic activities:
 - a. An operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program preschool may participate in, staff-to-child ratios appropriate to the ages and

swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

17. Pets and animals.

- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
- d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

18. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.

19. The operator shall ensure that soiled or wet clothes or diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the preschool facility.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; July 1, 2020; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-19. Minimum requirements regarding space.

1. Each preschool shall provide adequate indoor and outdoor space for the daily activities of all children for the licensed capacity of the preschool.
2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of indoor space per child. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy.
3. There must be a minimum of seventy-five square feet [6.97 square meters] of appropriate outdoor play space per child for the preschool. If available outdoor play space does not accommodate the licensed capacity of the preschool at one time, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the preschool multiplied by seventy-five square feet [6.97 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The operator shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits the use of the play area to its capacity, giving each class or group an opportunity to play daily.
4. An ~~operator~~owner holding a current license under this chapter on or before January 1, 2022, is exempt from subsection 3 unless the ~~operator's~~owner's license lapses for more than six months.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-20. Program requirements.

1. A preschool must have a written curriculum which describes the ~~program's~~preschool's philosophy, goals, objectives, program, and a program evaluation process.
 - a. The curriculum must promote cognitive, social, emotional, and physical growth of children in care.
 - b. The curriculum must be based on the developmental levels and needs of children enrolled.
 - c. The curriculum must provide for daily outdoor play.
2. The director shall exchange information with parents concerning the ~~program~~preschool, its activities, and the adjustment of the child to the ~~program~~preschool.
3. Each child's cultural and ethnic background and primary language or dialect must be respected by the staff members.
4. The director or teacher shall design a written daily plan of program activities for the children enrolled in the ~~program~~preschool.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-21. Minimum standards for the provision of snacks.

1. An operator shall serve a nutritious snack on a regular basis to children in care for more than two and one-half hours.
2. If the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a preschool must be treated in a sanitary and safe manner with sanitary and safe equipment.
3. The operator shall serve snacks and meals to children in a manner commensurate with the child's age, using appropriate foods, portions, dishes, and eating utensils.
4. The operator or staff member may encourage children to eat the food served, but the operator or staff member may not coerce or force-feed children.

History: Effective December 1, 1981; amended effective January 1, 2011; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the preschool and shall make it available to staff members at all times.
2. The operator shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents authorizing emergency medical care;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. Names and telephone numbers of individuals authorized to take the child from the preschool;
 - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and
 - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.

4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless otherwise protected by law:
 - a. The ~~authorized agent and~~ department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The preschool shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-26. Minimum provisions regarding emergency care for children.

The preschool must have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrolled children are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Provide a plan for responding to minor illnesses and minor accidents when children are in the care of the preschool, and provide a plan for accessing available medical consultation regarding special care and medication;
7. Require written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent of a child in the preschool who requires medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date;
 - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container; and
 - c. The operator shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each dose administered, the dosage, the name of the staff member administering the

medication, and the name of the child. The operator shall include completed medication records in the child's record;

8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the preschool, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary;
9. Identify a source of emergency services available to the preschool, including:
 - a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement;
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent is notified;
10. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or authorities from the public health division of the department ~~of health and human services~~ regarding the exclusion and return of children with infectious or communicable conditions. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the preschool;
11. Require information be provided to parents, as needed, concerning child health and social services available in the community;
12. Require that the preschool inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record; and
13. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 2, 2011; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-27. Effect of conviction on licensure and employment.

1. An applicant, operator, or director may not be, and a preschool may not employ or allow, in any capacity that involves or permits contact between the teacher, assistant, emergency designee, staff member, or household member, and any child cared for by the preschool, an operator, director, staff member, teacher, assistant, emergency designee, or household member, who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.2, domestic violence; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment;

12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, operator, household member, or director, or the operator in the case of a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.
 3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
 4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
 5. An ~~operator~~owner shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The ~~operator~~owner shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse ~~a person~~an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
 6. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 1999; amended effective January 2, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11-28. Child abuse and neglect determinations.

An [owner and](#) operator shall ensure safe care for the children receiving services in the preschool.

1. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by any applicant, [owner](#), operator, director, teacher, assistant, staff member, substitute staff member, emergency designee, or household member, it has a direct bearing on the applicant's, [owner](#), or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, [owner](#), operator, director, teacher, assistant, staff member, substitute staff member, emergency designee, or household member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, [owner](#), operator's, director's, teacher's, assistant's, staff member's, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, [owner](#), operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete, and the operator shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form no later than the first day of employment.
3. Household members age twelve and older shall complete, and the operator shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the preschool.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-29. Correction of violations.

1. Within ~~threeten~~ business days of ~~receipt~~mailing or three days of electronic transmission of the correction order, the ~~operator~~owner shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the ~~operator~~owner shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-11-04; subsection 13 of section 75-03-11-08; section 75-03-11-09; subsection 4 of section 75-03-11-10; subsection 3 of section 75-03-11-13; subsection 2, 7, or 8 of section 75-03-11-18; or section 75-03-11-23, within twenty-four hours;
 - b. For a violation requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the owner and operator.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the ~~operator~~owner and a showing that the need for the extension is created by unforeseeable circumstances and the ~~operator~~owner has diligently pursued the correction of the violation.
5. The ~~operator~~owner shall furnish written notice to the department ~~or its authorized agent~~ upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
6. At the end of the period allowed for correction, the department ~~or its authorized agent~~ shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or ~~its authorized agent~~ determines that the preschool has not corrected a violation identified in the correction order, the department ~~or its authorized agent~~ shall mail or send by electronic mail a notice of noncompliance with the correction order ~~by certified mail~~ to the preschool owner and operator. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a preschool receives more than one correction order in a single year, the owner and operator may be referred by the department for consulting services. The consulting services will be offered to assist the ~~operator~~owner in maintaining compliance and to avoid future corrective action.
8. Refutation process for a correction order:

- a. An ~~operator~~owner may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction orders.
- b. The department shall respond to written refutations within five business days of receipt.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11.1

75-03-11.1-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
3. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
4. "Attendance" means the total number of children present at any one time at the facility.
5. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
6. "Director" means an individual responsible for overseeing the general operation of, and implementing the policies and procedures of, the school-age child care program.
7. "Emergency designee" means an individual designated by the school-age child care program to be a backup staff member for emergency assistance or to provide substitute care.
8. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
9. "Operator" means the ~~individual or governing board~~ person that who has ~~the legal~~ operational responsibility ~~and the administrative authority~~ for the ~~operations of a~~ school-age child care program and premises at which the school-age child care program operates.
10. ~~"School-age child care program" or "program" means a program licensed to provide early childhood services exclusively to school-age children before and after school, during school holidays, and during summer vacation.~~ "Owner" means the person that has legal responsibility for the early childhood program and premises at which the early childhood service operates.
11. "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
12. "Supervisor" means any ~~person~~ individual with the responsibility for organizing and supervising daily program activities.
13. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11.1-06. Provisional license.

1. The department may issue a provisional license for the operation of a school-age child care program although the applicant or ~~operator~~ owner fails to, or is unable to, comply with all applicable standards and rules of the department.

2. A provisional license must:
 - a. State that the **operatorowner** has failed to comply with all applicable standards and regulations of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or **operatorowner** demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or **operatorowner** who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the applicant or **operatorowner**.
5. Subject to the exceptions contained in this section, a provisional license entitles the **operatorowner** to all rights and privileges afforded the **operatorowner** of an unrestricted license.
6. The department may not issue a provisional license if the school-age child care program is not in compliance with section 75-03-11.1-17 or 75-03-11.1-18.
7. The **operatorowner** shall display prominently the provisional license and agreement.
8. The **operatorowner** shall provide parents written notice that the school-age child care program is operating on a provisional license and the basis for the provisional license.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11.1-06.1. Restricted license.

The department may issue a restricted license:

1. To restrict an individual's presence when children are in care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform parents that the **operatorowner** is licensed, but is restricted to operating in certain rooms or floors of the facility or restricted from using specific outdoor space of the facility.

History: Effective January 1, 2011; amended effective April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11.1-07. Application for and nontransferability of school-age child care program license.

1. An applicant shall submit an application for a license to the department ~~or its authorized agent~~. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and is valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of ~~operator~~owner or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11.1-08. Duties of school-age child care program operator.

The operator of a school-age child care program is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator:

1. Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:
 - a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If the operator has legal responsibility and the administrative authority over two or more school-age child care programs, a director shared between two or more school-age child care programs shall be present a combined total of sixty percent of the school-age programs' hours of operation.
 - b. Ensure that when the director and designated acting director are not present at the program, ~~a person~~an individual who meets the qualifications of a supervisor is on duty.
 - c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.
 - d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;

2. ~~Shall apply for a license for the school-age child care program;~~

~~3.~~ Shall provide an environment that is physically and socially adequate for children;

~~4.~~3. Shall notify the department ~~or its authorized agent~~ of any major changes in the operation of, or in the ownership or governing body of the school-age child care program, including staff member changes;

~~5.~~4. Shall ensure that the school-age child care program carries liability insurance against bodily injury and property damage;

- ~~6.5.~~ Shall formulate written policies and procedures for the operation of the school-age child care program relating to:
- a. Hiring practices and personnel policies for all staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment;
 - e. The responsibilities and rights of staff members and parents;
 - f. An explanation of how accidents and illnesses may be handled;
 - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - i. The care and safeguarding of personal belongings brought to the school-age child care ~~center~~program by a child or by another on a child's behalf;
 - j. Procedure for accountability when a child fails to arrive as expected at the school-age child care program; and
 - k. Transportation procedures, if the operator provides transportation;
- ~~7.6.~~ Shall maintain enrollment, attendance, health, and other required records;
- ~~8.7.~~ May select an emergency designee;
- ~~9.8.~~ Shall maintain necessary information to verify staff member qualifications and to ensure safe care for the children in the school-age child care program;
- ~~10.9.~~ Shall inform parents of enrolled children and other interested parties about the school-age child care program's goals, policies, procedures, and content of the program;
- ~~11.10.~~ Shall advise parents of enrolled children of the school-age child care program's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
- ~~12.11.~~ Shall provide parents of enrolled children information regarding the effective date, duration, scope, and impact of any significant changes in the school-age child care program's services;
- ~~13.12.~~ Shall ensure that the school-age child care program is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
- ~~14.13.~~ Shall ensure that the school-age child care program has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;
- ~~15.14.~~ Shall ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- ~~16.15.~~ Shall provide parents with unlimited access and opportunities for parents to observe their children while in care and provide parents with regular opportunities to meet with staff

members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a school-age child care program from locking its doors when children are in care;

- | ~~47.16.~~ Shall provide parents, upon request, with progress reports on their children;
- | ~~48.17.~~ Shall ensure that provisions are made for safe arrival and departure of all children, and a system is developed to ensure that children are released only as authorized by the parent;
- | ~~49.18.~~ Shall develop a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, which must include, at a minimum:
 - a. Written permission from the parents allowing a child to leave the program without supervision; and
 - b. Consistent sign-out procedures for released children;
- | ~~20.19.~~ Shall report immediately, as a mandated reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;
- | ~~24.20.~~ Shall meet the qualifications of the director set forth in section 75-03-11.1-08.1 if the operator of the school-age child care program is also the director;
- | ~~22.21.~~ Shall ensure that staff members responsible for caring for or teaching children under the age of eighteen are directly supervised by an adult staff member; ~~and~~
- | ~~23.22.~~ Shall report to the department ~~or its authorized agent~~ within twenty-four hours:
 - a. The death or serious accident or illness requiring hospitalization of a child while in the care of the program or attributable to care received in the program;
 - b. An injury to any child which occurs while the child is in the care of the program and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the school-age child care program; ~~and~~.
- | ~~24.23.~~ Shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.1. Minimum qualifications of a school-age child care program director.

A director shall:

1. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;
2. Possess knowledge and experience in management and interpersonal relationships;

3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education, child development, or elementary education;
 - b. A bachelor's degree with at least six months of experience in a school-age child care program or similar setting and one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved early childhood education, child development, or elementary education;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
 - c. An associate degree in the field of early childhood education or child development with at least six months of experience in a school-age child care program or similar setting;
 - d. An associate's degree with at least one year of experience in a school-age child care program and one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved early childhood education, child development, or elementary education;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
 - e. A current certification as a child development associate or similar status with at least one year of experience in a school-age child care program or similar setting;
 - f. Certification from a Montessori teacher training program with one year of experience in a Montessori school, school-age child care program, or similar setting, and at least one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved child development, early childhood education, or elementary education;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department; and
4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care, including one hour on mandated reporter of suspected child abuse or neglect. The same training courses may be counted toward licensing annual requirements only if three years has passed since the last completion date of that training course, with the exception of mandated reporter annual training.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2018; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.3. Minimum qualifications of school-age child care program supervisor.

1. A supervisor shall hold at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;

- b. Current certification as a child development associate;
 - c. Certification from a Montessori teacher training program; or
 - d. A high school diploma or high school equivalency with at least one year of experience in a child care program or similar setting.
2. The supervisor shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.
 3. The supervisor shall be an adult of good physical, emotional, social, and cognitive health, and shall use mature judgment when making decisions impacting the quality of child care. A supervisor must possess knowledge and experience in building and maintaining interpersonal relationships.
 4. The supervisor shall certify annual completion of a minimum of thirteen hours of department-approved training related to child care annually, including one hour on mandated reporter of suspected child abuse or neglect. The same training courses may be counted toward licensing annual requirements only if three years has passed since the last completion date of that training course, with the exception of mandated reporter annual training.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2018; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.4. Minimum qualifications for all school-age child care program staff members responsible for caring for or teaching children.

1. Each staff member shall be at least sixteen years of age, shall be an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.
2. a. Each staff member shall certify the staff member's own annual completion of department-approved training related to child care as set forth below:
 - (1) Staff members working more than thirty hours per week shall certify a minimum of thirteen hours of department-approved training annually;
 - (2) Staff members working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually;
 - (3) Staff members working fewer than twenty hours and at least ten hours per week shall certify a minimum of nine hours of department-approved training annually; and
 - (4) Staff members working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.
- b. Each staff member shall certify annual completion of one hour of department-approved mandated reporter of suspected child abuse or neglect training.
- c. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of subdivision b.
- d. Substitute staff and emergency designees are exempt from the annual training requirement with the exception of subdivision b.

3. All staff members responsible for caring for or teaching children shall certify completion of a department-approved basic child care course within ninety days of employment.
4. The director shall provide newly hired staff members with responsibilities for caring for or teaching children ~~a two-day onsite~~and orientation to the school-age child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address:
 - a. Emergency health, fire, and safety procedures for the school-age child care program;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition ~~problems~~instructions of the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the school-age child care program;
 - f. Rules and policies of the school-age child care program; and
 - g. Child abuse and neglect reporting laws.
5. Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.
6. A staff member may not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
7. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department.
8. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the department ~~or its authorized agent~~.
2. The operator shall ensure that the school-age child care program is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

3. The operator shall ensure that the school-age child care program provides:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the school-age child care program has been inspected and that the inspector is satisfied that the school-age child care program meets minimum fire and safety standards.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-18. Minimum sanitation and safety requirements.

1. ~~In~~The operator shall ensure that school-age child care programs for more than thirty children, where meals are prepared, ~~the operator shall ensure that~~comply with the public health division of the department ~~of health and human services conducts an annual inspection~~child care food service establishment license requirements pursuant to North Dakota Century Code chapter 23-09. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department ~~or its authorized agent~~. If only snacks or occasional cooking projects are prepared, an inspection by the public health division of the department ~~of health and human services~~ is not required.
2. The operator shall ensure that the school-age child care program's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
3. The operator shall ensure that the school-age child care program ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
5. The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
6. The operator shall ensure that wading pools used by the school-age child care program are strictly supervised and are emptied, cleaned, and sanitized daily.
7. The operator shall ensure that all swimming pools are approved annually by the local health unit.
8. Aquatic activities:
 - a. The operator shall have policies which ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
9. The operator shall ensure that all school-age child care program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
 10. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
 11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
 12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
 13. If the school-age child care program is providing care to children in wheelchairs, the operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
 14. The operator shall ensure that exit doorways and pathways are not blocked.
 15. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
 16. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
 17. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the school-age child care program is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
 18. The operator shall ensure that school-age child care program bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
 19. The operator shall ensure that personal items including combs and toothbrushes are individually identified and stored in a sanitary manner.
 20. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use or individually designated cloth towels must be available at each sink.

21. The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
22. Water supply standards:
 - a. The operator shall ensure that the school-age child care program has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality;
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
 - c. The school-age child care program must have hot and cold running water.
23. Toilet and sink facilities:
 - a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;
 - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
 - c. A minimum of one flush toilet must be provided for each fifteen children;
 - d. The operator shall provide separate restrooms for boys and girls and shall ensure that partitions are installed to separate toilets in these restrooms;
 - e. The operator shall provide at least one handwashing sink per toilet room facility; and
 - f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.
24. The operator of a school-age child care program not on a municipal or public water supply or wastewater disposal system shall ensure the school-age child care program's sewage and wastewater system has been approved by the department of environmental quality.
25. Laundry:
 - a. If the school-age child care program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;
 - b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation;
 - c. The operator shall ensure that in all new or extensively remodeled school-age child care programs, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;
 - d. The operator shall ensure that in an existing school-age child care program where physical separation of laundry and kitchen areas is impractical, procedures are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;

- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas;
 - f. If the school-age child care program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius]; and
 - g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the program shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].
26. The operator shall take steps to keep the school-age child care program free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.
27. Pets and animals:
- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
28. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:

- a. Pillows and mattresses have clean coverings.
- b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
- c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
- d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
- e. That cots, mats, and cribs are single occupancy.
- f. Each bed, cot, or mat has sufficient blankets available.
- g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
- h. Provide separate storage for personal blankets or coverings.
- i. That mattresses and sheets are properly fitted.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards, and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a school-age child care program must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator shall supplement lunches when necessary to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day. The operator shall serve nutritious meals to children in care during any normal mealtime hour.
4. When the operator is responsible for providing food to children, menus must be prepared on a weekly basis and made available to the parents, the department ~~or its authorized agent~~, and other appropriate individuals.
5. The operator shall consider information provided by the children's parents as to the children's eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.
6. The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
7. The operator or staff members may encourage children to eat the food served, but the operator or staff members may not coerce or force-feed children.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; July 1, 2020; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the school-age child care program and shall make it available to staff members at all times.
2. The operator shall maintain the following records and shall keep copies at the school age program premises where the child is enrolled:
 - a. The child's full name, birth date, and current home address;
 - b. Legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the school-age child care program;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department ~~of health and human services~~, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless protected by law:
 - a. The ~~authorized agent and~~ department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The school-age child care program shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-26. Minimum provisions regarding emergency care for children.

The school-age child care program shall have written plans to respond to illness, accidents, and emergencies, including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrolled children are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit be maintained and kept in each major activity area, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Require that the program inform parents in writing of any first aid administered to their child within twenty-four hours of the incident and immediately notify parents of any injury which requires emergency care beyond first aid, and require an injury report to be made a part of the child's record;
7. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the school-age child care program;
8. Require written permission to dispense medication and require proper instructions for the administration of medication be obtained from the parent of a child in the school-age child care program who requires medication:
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to its dosage and storage, and labeled with the child's name and date.
 - b. The program shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. The program shall include completed medication records in the child's record.
 - c. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container;
9. Require a supervised, temporary isolation area be designated for a child who is too ill to remain in the school-age child care program, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care sought, as necessary;
10. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or authorities from the public health division of the department of health and human services regarding the exclusion and return of children with infectious or

communicable conditions. The **programoperator** may obtain this guidance directly or through current published material regarding exclusion and return to the school-age child care program;

11. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease;
12. Identify a source of emergency health services readily available to the school-age child care program, including:
 - a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent is notified; and
13. Require information be provided to parents, as needed, concerning child health and social services available in the community.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11.1-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a school-age child care program may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, staff member, or household member and any child cared for by the school-age child care program, an operator, emergency designee, substitute staff member, director, supervisor, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a school-age child care program applicant, operator, director, supervisor, or household member, or the school-age child care program operator in the case of an

emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.
5. An ~~operator~~owner shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The ~~operator~~owner shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse ~~a person~~an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
6. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11.1-28. Child abuse and neglect decisions.

An operator shall ensure safe care for the children receiving services in the school-age child care program.

1. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, staff member, or household member, that decision has a direct bearing on the applicant's, owner or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by the applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, staff member, or household member, the applicant or operator shall furnish information satisfactory to the department from which the department can determine the applicant's, owner, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form no later than the first day of employment.
3. Household members age twelve and older shall complete, and the operator shall submit to the department ~~or its authorized agent~~, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the school-age child care.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023; [April 1, 2024](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-29. Correction of violations.

1. Within ~~threeten~~ business days of ~~the receipt~~ mailing or three days of electronic transmission of a correction order, the ~~operator~~owner shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the ~~operator~~owner shall post the correction order in a conspicuous location within the school-age child care program until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; subsection 13 of section 75-03-11.1-08; subsection 4 or 5 of section 75-03-11.1-08.4; section

75-03-11.1-09; subsection 2, 3, 10, or 20 of section 75-03-11.1-18; or section 75-03-11.1-23, within twenty-four hours.

- b. For a violation requiring the hiring of a school-age child care program director with those qualifications set forth in section 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section 75-03-11.1-08.3, within sixty days.
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - e. For all other violations, within twenty days.
3. All time periods for correction begin on the date of receipt of the correction order by the owner and operator.
 4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operatorowner and a showing that the need for the extension is created by unforeseeable circumstances and the operatorowner has diligently pursued the correction of the violation.
 5. The operatorowner shall furnish a written notice to the department ~~or its authorized agent~~ upon completion of the required corrective action. The correction order remains in effect until the department ~~or its authorized agent~~ confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department ~~or its authorized agent~~ shall reinspect a school-age child care program that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department ~~or its authorized agent~~ shall mail or send electronic mail a notice of noncompliance with the correction order ~~by certified mail~~ to the ~~school-age child care programowner and operator~~. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a school-age child care program receives more than one correction order in a single year, the department ~~or authorized agent~~ may refer the school-age child care program for consulting services to assist the operatorowner in maintaining compliance to avoid future corrective action.
 8. Refutation process for a correction order:
 - a. An operatorowner may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department shall respond to written refutations within five business days of receipt.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022; April 1, 2024.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-14
FAMILY FOSTER HOME FOR CHILDREN

Section

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75-03-14-01. Definitions.

Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Authorized licensing agent" means the department or entity identified or licensed by the department to complete the foster care for children license, certification, or approval home study assessment.
2. "Background check" means a fingerprint-based criminal history record investigation inclusive of a child abuse and neglect index check in each state or tribal jurisdiction that the individual has resided in the previous five years.
3. "Certified foster care provider" means an individual residing in a private dwelling providing temporary care and safety services to no more than three children placed out of the home, unless otherwise approved by the department.
4. "Dwelling" means a home, townhouse, apartment, condominium, or manufactured home where an applicant resides and is approved by the department.
5. "Foster care provider" means an individual residing in a private dwelling who maintains a license, certification, or approval from the department to provide family foster care to children in need of temporary safety services when placed out of the home.
6. "Identified relative foster care provider" means an individual residing in a private dwelling providing temporary care and safety services to no more than six relative children placed out of the home, unless otherwise approved by the department.
- ~~2.7.~~ "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
- ~~3.8.~~ "Supervising agency" means the human service zone, division of juvenile services, or tribe having care, custody, and control of the ~~foster~~child in foster care as ordered by a court of competent jurisdiction or the designee of that agency or person.

History: Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020; April 1, 2024.

75-03-14-02. License, certification, or approval.

1. Application ~~for a family to provide~~ foster ~~home~~care for children license, certification, or approval must be made as prescribed by the department.
2. The ~~family foster home for children~~ licensing or certification process requires completion and documentation of the following items, ~~which must be received by the department for the application to be considered complete:~~
 - a. Application ~~form~~;
 - b. ~~Compliance with fire and safety requirements;~~
 - ~~c. Reference letters;~~
 - ~~d. Medical history self-declaration;~~
 - ~~e. Background~~Initial background check;
 - ~~f.c.~~ Initial and annual child abuse and neglect index check;
 - ~~d.~~ Training requirements;
 - ~~e.~~ Home visits completed by the authorized licensing agent; and
 - ~~g.f.~~ Home study assessment, including completed by the authorized licensing agent. The assessment may include interviews with each household member ~~of the household as determined age appropriate.~~
3. The license is, certification, or approval must be issued to the applicant for a specific number ~~of children, a specified,~~ age ~~group of the children,~~ and ~~the sex~~gender of ~~the child or~~ children eligible to be served in the foster care provider's dwelling.
- ~~4.~~ The duration of the license is not to, certification, or approval may not exceed ~~one year~~two years.
- ~~4.5.~~ The department may issue a license, certification, or approval with stated limitations, restrictions, and conditions.
- ~~5.6.~~ The license, certification, or approval is not transferable and is valid only for the applicants residing at a physical location ~~of the family foster home for children at the time the license is issued, or at another location as noted at the time of issuance, unless otherwise~~ approved by the department, ~~provided that the authorized agent performs an onsite visit within seven days of the move, and thereafter approves the temporary.~~ Only one license, certification, or approval may be permitted for each physical location.
- ~~6.7.~~ After reviewing an ~~individual's~~ application ~~for licensure,~~ the department may deny a license or certification if:
 - a. ~~If the~~The application contains fraudulent information, ~~an untrue representation, or is incomplete;~~
 - b. ~~If the family foster home for children~~After completing the home study, the department determines the dwelling is in an unsanitary condition;

- c. ~~If the family foster home for children~~After completing the home study, the department determines the applicant or dwelling is not properly equipped to provide for the health and safety of the children served; or
- d. ~~If the~~The applicant is not in compliance with the regulations prescribed for licensing or certification by the department~~for the operation of a family foster home for children.~~

~~7-8.~~ If the facility located on or near, as defined by the tribe, a recognized Indian reservation in this state is identified as a ~~family foster home for children~~foster care provider, and is not subject to the jurisdiction of the state of North Dakota for ~~family foster home for children~~licensing or certification purposes, the department, with a signed agreement with the tribe, shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer in lieu of completing the foster care for children licensing or certification procedure. The department shall issue an approval of the ~~foster home for children~~license or certification if the affidavit represents the following:

- a. A home study of the ~~family~~foster home for childrencare provider was completed by the tribe's child welfare agency or tribal council; and
- b. The ~~prospective family~~foster home for childrencare provider is in compliance with the standards adopted by the tribe for family foster care for children licensing or certification, as described in the agreement signed by the tribe and the department; or
- c. The ~~prospective family~~foster home for childrencare provider is in compliance with the standards required by North Dakota Century Code section 50-11-02, as described in the agreement signed by the tribe and the department.

9. The department may withdraw its approval if the provisions in subsection 8 are no longer met.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-02.2

75-03-14-03. Minimum physical standards ~~for the family foster home for children.~~

~~1.~~The ~~family~~ foster ~~home for children~~ ~~must be~~ care provider shall reside in a dwelling, ~~mobile home, housing unit, or apartment~~ occupied by an individual or a single family. The foster care provider's dwelling must be in compliance with applicable state or local zoning requirements and must meet the following criteria:

- ~~2.~~The family foster home for children must have an operational telecommunications device, and residents of the home must have access to it to make immediate contact with authorities in emergencies.
- ~~3.~~a. ~~The family foster home for children must have adequate sleeping rooms to accommodate the size of the household, including an individual bed and bedding for each foster child to sleep comfortably.~~
- ~~b.~~All sleeping rooms must have an accessible window to exit and to allow for proper light and ventilation and appropriate fire alarms or smoke detectors as recommended by the local fire department, state fire marshal, or local building codes.
- ~~c.~~Basement sleeping rooms must be equipped with more than one exit. Foster children in basement sleeping rooms must be able to demonstrate their ability to depart from all exits.

- ~~d. Co-sleeping or bed sharing with a foster child is prohibited.~~
- ~~4. Exterior doors must be maintained to permit easy exit.~~
- ~~5. Interior doors must prevent children from being trapped.~~
- ~~6. Every closet door must be one that can be opened from the inside. Bathroom doors must be installed so the door, when locked, may be opened from the outside in an emergency.~~
- ~~7. The family foster home for children and premises must be clean, neat, and free from hazards that jeopardize health and safety. The family foster home for children shall engage in proper trash disposal and be free from rodent and insect infestation.~~

8.1. General dwelling areas must include:

- a. Cleanliness, neatness, and may not include hazards that jeopardize health and safety;
- b. Adequate light, heat, ventilation, and plumbing;
- c. A kitchen with operating sink, refrigerator, stove, and oven;
- d. A bathroom with sink, toilet, and bathtub or shower;
- e. Interior doors that allow for entry from the outside in an emergency when locked;
- f. Exterior doors maintained to permit easy exit;
- g. Doors that prevent a child from being trapped, including closet doors that can open from the inside;
- h. An operational telecommunications device; and
- i. Proper storage of medications, alcohol, poisonous materials, cleaning supplies, and other hazardous materials to prevent access to children, which is appropriate for the age and development of the children in placement.

2. Sleeping space in the dwelling must:

- a. Accommodate the size of the household, including an individual bed and bedding for each child in foster care;
- b. Prohibit co-sleeping or bed sharing with a child in foster care; and
- c. Have more than one exit, including an accessible window that opens to the outside.

3. Fire safety parameters in the dwelling must include:

- a. Compliance with local building code and guidelines prescribed by the local fire department or state fire marshal regarding fire safety in a dwelling;
- b. Completion of a fire safety self-declaration;
 - (1) The department may request the foster care provider satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal; and
 - (2) If an inspection is required, the foster care provider shall ensure all deficiencies noted during the inspection are remedied in efforts to obtain a license, certification, or approval;

- c. Smoke detectors installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code;
- d. Carbon monoxide detectors, where applicable, installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code; and
- e. 2A 10BC fire extinguishers certified by Underwriters' Laboratories maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code.

4. Food, water, and milk consumption in the dwelling must include:

- a. Food in wholesome condition, free from spoilage or contamination, and safe for human consumption;
- b. Water supply in compliance with regulations for human consumption as noted in North Dakota Century Code chapter 33.1-16. Water must be from an approved municipal water system where available. If a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The foster care provider shall obtain results from an environmental protection agency laboratory approved by the department; and
- c. The milk supply consumed in the family foster home for children must be obtained from a department-approved source.

5. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.

~~9. The family foster home for children must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The family foster home for children shall have a properly operating sink, refrigerator, stove, and oven in the kitchen and at least one sink, toilet, and bathtub or shower in the bathroom.~~

~~10. The family foster home for children and grounds must be in compliance with any applicable state and local zoning requirements.~~

~~11. The water supply must be from an approved municipal water system where available. Where a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The family foster home for children shall obtain results from an environmental protection agency approved laboratory for testing through licensing with the department of environmental quality. In addition, the family foster home for children shall ensure the water temperature is monitored for safety.~~

~~12. The milk supply consumed in the family foster home for children must be obtained from a department-approved source.~~

~~13. If required by the department, the family foster home for children must satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal. The family foster home for children shall ensure all deficiencies noted during the inspection are remedied.~~

~~14. The family foster home for children must be equipped with the approved Underwriters' Laboratories fire extinguishers, smoke detectors, and smoke alarms as recommended by the local fire inspector, state fire marshal, or building code. The fire extinguishers, smoke detectors, and smoke alarms must be in working condition at all times. In an apartment building, the fire extinguisher, smoke detectors, and smoke alarms must be inside the apartment unit.~~

- ~~15.6.~~ ~~The family foster home for children shall have~~ Transportation must be available, reliable, legal, and safe ~~transportation available~~ to transport children in placement.
- ~~16.~~ ~~The family foster home for children shall be equipped with a carbon monoxide detector.~~
- ~~17.~~ ~~The family foster home for children shall develop a written emergency preparedness plan; maintain and post a list of emergency contacts, including poison control, and have first aid supplies on hand while a foster child is in placement.~~
- ~~18.~~ ~~The family foster home for children shall properly store medications, alcohol, poisonous materials, cleaning supplies, and other hazardous materials to prevent access to children, as appropriate for age and development of the children in placement.~~
- ~~19.7.~~ Pets belonging to the foster family care provider must be properly vaccinated ~~as~~ per veterinary guidelines.
- ~~20.8.~~ Swimming pools ~~in~~ must meet safety standards prescribed by the department. ~~In~~ the ground or ~~an~~ aboveground ~~pool~~ swimming pools with a depth of four feet or greater must have a barrier on all sides to minimize unsupervised access. ~~The barrier must be equipped with a safety lock. If the pool cannot be drained, the swimming pool must have a working pump and filtering system. The pool area must have a life saving device available in the event of an emergency. This standard does not apply to a small wading pool.~~
- ~~21.9.~~ Hot tubs on the premises ~~of a foster home for children~~ must have a safety code covers cover that ~~are~~ is locked when not in use.

History: Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014; April 1, 2016; October 1, 2019; April 1, 2024.

General Authority: NDCC 50-11-03, 50-11-04

Law Implemented: NDCC 50-11-02

75-03-14-04. Qualifications of persons individuals residing in the ~~family foster home for children~~ dwelling.

1. An applicant for licensure, certification, or approval must:
 - ~~(a)~~ a. Be age twenty-one years or greater;
 - ~~(b)~~ b. Be financially stable with reasonable income or resources available to the ~~home~~ foster care provider to properly care for children; and
 - ~~(c)~~ c. Have functional literacy, demonstrating their ability to read licensing communications delivered by the authorized licensing agent or supervising agency, policy, ~~handbook~~, child care plans, and medication labels.
- ~~2.~~ ~~A person residing in the family foster home for children, except a foster child or ward of the court, may not exhibit symptoms of substance abuse or emotional instability that inhibit their ability to care for children.~~
- ~~3.~~ ~~No person~~ An individual may not smoke or vape in the ~~family foster home for children, in circumstances which present a hazard to the health of the foster child,~~ care provider's dwelling or in an enclosed area when the ~~foster child~~ in foster care is present. ~~All foster parents must be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity.~~
- ~~4.3.~~ If symptoms of substance abuse or emotional instability that inhibit the ability to care for children occur in a family foster home for children at a time when A household member, not

including a child in foster care, may not exhibit symptoms of a mental health or behavioral health condition, including substance use, that inhibit the applicant's ability to provide care to children.

a. Upon initial licensing, certification, or approval, an applicant or household member may not have symptoms of a mental health or behavioral health condition, including substance use, inhibiting the applicant's ability to provide care to children for a period of at least twelve months.

b. Throughout licensing, certification, or approval periods, if an applicant or household member is experiencing symptoms of a mental health or behavioral health condition, including substance use, and a ~~foster~~ child in foster care is in placement, every effort should be made to keep the placement intact if safety has been assessed and the household member is ~~seeking~~receiving treatment or services. The ~~supervising agency may make no further placements in that family foster home for children until the household member successfully completes treatment. If a household member has symptoms of substance abuse or emotional instability, the household member may have had no incidents which inhibited their ability to care for children for a period of at least twelve months prior to an applicant obtaining licensure~~authorized licensing agent must reassess the foster care provider's protective capacities to ensure the symptoms do not inhibit the applicant's ability to provide care.

~~5.4.~~ A ~~member of the~~ household member, ~~except~~not including a ~~foster~~ child in foster care, may not have been the subject of a child abuse or neglect assessment where a confirmed decision was made unless the department, after making appropriate consultation with ~~persons qualified to evaluate the capabilities of the household member, documenting criteria used in making the decision, and imposing any restrictions deemed necessary~~child protective services, approves the issuance of a license, certification, or approval; and

a. The household member has followed the recommendations of the child protection ~~team~~assessment; or

b. The household member can demonstrate the elimination of ~~an~~ underlying ~~basis~~factors precipitating the ~~neglect or abuse~~confirmed decision.

5. The department may require psychological testing for any household member, as determined necessary. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.

6. Prior to the department approving ~~a~~an initial license, certification, or approval, the applicant shall submit the results of a physical examination dated within twelve months of the date of application. All foster ~~parents~~care providers, annually thereafter, shall ~~submit a declaration of good health, including all residents of the family foster home for children, except any foster child, in a manner and form required by the department. The authorized agent is the payer of last resort whenever any other benefit or source of third-party payment is available for the cost of any physical examinations required pursuant to this subsection~~discuss the health of the provider and all other individuals residing in the dwelling as part of the home study assessment. Any foster ~~parent~~care provider continuously licensed prior to October 1, 2019, is exempt from having to submit a ~~declaration of good health~~physical examination. Identified relative foster care providers are exempt from completing the initial physical exam, unless otherwise determined by the department.

7. The department may require proof of immunizations for all ~~residents living in the family foster home for children~~individuals residing in the foster care provider's dwelling, except ~~any foster~~a child in foster care. It is recommended all members of the household be up to date on immunizations as recommended by a health care professional, unless the immunization is

contrary to the ~~person's individual's~~ health as documented by a licensed health care professional or the ~~person individual~~ provides written documentation that immunizations are against the ~~person's individual's~~ religious, philosophical, or moral beliefs.

8. The department ~~or supervising agency~~ may require ~~foster parents a foster care provider~~ specializing in the care of medically fragile ~~infants and~~ children to receive specific vaccines if the needs of the child require such precaution, ~~such as influenza or pertussis~~.

9. ~~The department may require psychological testing of any resident of the family foster home for children as determined necessary. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.~~

~~10.~~ Physical disabilities or age of ~~a foster~~ ~~parents de~~ ~~care provider does~~ not affect licensing ~~of the family foster home for children, certification, or approval~~ provided that the applicant can show that these factors do not ~~significantly~~ inhibit the ability ~~of the foster parents to efficiently carry on the duties required of them~~ ~~to care for children in foster care~~.

~~11.10.~~ ~~All~~ ~~A~~ foster ~~parents or potential parents must demonstrate a working knowledge and~~ ~~care provider shall~~ comply with the department's approved ~~family foster home for children~~ preservice training competencies ~~and demonstrate the ability to apply the skills when caring for children in foster care~~.

~~12.11.~~ ~~All~~ ~~A~~ foster ~~parents or potential parents must demonstrate a working knowledge of the~~ ~~care provider shall comply with the department's~~ reasonable and prudent parent standard by allowing ~~foster~~ children ~~in foster care~~ the opportunity to participate in developmentally and age appropriate activities. ~~All foster parents must engage in the reasonable and prudent parent standard.~~

~~13.12.~~ ~~Fire safety~~ ~~A foster care provider shall meet the~~ training ~~is required annually~~ ~~requirements defined by the department~~.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-11-03, 50-11-03.4

Law Implemented: NDCC 50-11-02

75-03-14-04.1. Criminal Background checks and criminal conviction - Effect on licensure, certification, or approval.

1. The department requires an initial fingerprint-based criminal background check for each applicant and adult household member residing in the dwelling. Subsequent fingerprint-based background checks are not required when a foster care provider maintains continuous licensure, certification, or approval, unless the authorized licensing agent, supervising agency, or the department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index must be completed and placed in the licensing, certification, or approval file.

3. ~~A family foster home for children applicant, family foster home for children~~ care provider, or adult household members residing in the ~~family foster home for children~~ dwelling must not be known to have been found guilty of, pled guilty to, or pled no contest to:

a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; ~~or~~ 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C

felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; ~~12.1-20-12.3, sexual extortion~~; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if a class A or B felony under subsection 2 of that section; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
- c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, ~~without a subsequent charge or conviction~~, for all other criminal convictions has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2-4. The department has determined that the offenses enumerated in subdivisions a and b of ~~subsection 4~~ subsection 3 have a direct bearing on an individual's ability to provide foster care for children.

3-5. ~~If~~ In the ~~offense is a misdemeanor simple assault~~ case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that an individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent conviction~~ for all other criminal convictions. The department may not be compelled to make such determination.

4-6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

5-7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

- a. Common knowledge in the community;
- b. Acknowledged by the individual; or

c. Discovered by the authorized agent or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check whenever a licensed, certified, or approved foster care provider or adult household member is known to have been involved in, charged with, or convicted of an offense.

9. The department shall review fingerprint-based criminal background check results as follows:

a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel.

c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

e. The final decision of the review panel may not be appealed.

10. The department may excuse an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an individual is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the individual lived during the eleven years preceding the signed authorization for the background check.

11. A foster care provider consecutively licensed or approved prior to August 1, 1999, is not required to have a record of a fingerprint-based background check on file.

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016; October 1, 2019; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-14-05. ~~Operation of the family foster home for children~~ Provisions of service.

Foster care providers shall ensure the health and safety of children placed in their dwelling and provide a safety service to best meet the needs of the child in foster care. The provision of service may be accomplished in many ways, including meeting the daily needs of the child, supporting family connections, and complying with goals and tasks to assist the child in achieving timely permanency. The foster care provider shall:

~~1. The foster parents shall allow public officials to enter the family foster home for children as determined necessary by the public official to ensure safety.~~

~~2. The foster parents shall allow entry to the family foster home for children, at any reasonable time, personnel of the supervising agency. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the supervising agency's personnel or any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.~~

- ~~3.~~ ~~The foster parents shall cooperate~~ Participate in the child and family team meetings. Child and family team meetings are held at least quarterly, facilitated by the supervising agency to address and review the permanency plan of the child.
2. Cooperate in carrying out the objectives and goals of the permanency plan for the child developed and implemented in collaboration with the supervising agency ~~in that agency's efforts to develop plans for the child, implement those plans,~~ and child and family team. Foster care providers shall meet the needs of the child ~~and the child's family.~~ ~~The foster parents shall cooperate~~ while placed in the foster care provider's dwelling.
3. Acknowledge their role as a service provider and recognize, as a foster care provider, they may be considered, but are not guaranteed, to be a permanent option for the child. Foster care providers shall sign an acknowledgment that federal law establishes a permanency preference for children eligible under the Indian Child Welfare Act and North Dakota Century Code chapter 27-19.1 and with identified relatives of the child.
4. If requested by the supervising agency or the juvenile court, provide information concerning the child in foster care and the child's family.
5. Allow public officials to enter the provider's dwelling as determined necessary by the public official to ensure child safety.
6. Allow personnel of the authorized licensing agent or supervising agency to enter the provider's dwelling at any reasonable time. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster care provider and authorized licensing agent or supervising agency personnel or any time the authorized licensing agent or supervising agency determines that a child in foster care's health, safety, or welfare requires the admittance.
7. Cooperate with the supervising agency to make efforts to maintain and improve the relationships between the child in foster care and the child's family, whenever appropriate and possible. The foster care providers may not attempt to diminish the relationship between the child in foster care and the child's parents or between the supervising agency and the child in foster care.
8. Cooperate with the supervising agency ~~in developing plans for the child to visit~~ to develop an approved visitation plan with the child's parents or guardian. If ~~the foster parents agree, and it is appropriate, these visits~~ visitation may take place in the ~~family foster home for children~~ care provider's dwelling or in a community setting to allow for formal or informal mentoring and support by the foster care provider. ~~Visits between the foster child and the child's parents or guardian must be arranged within a plan approved by the agency, foster child where appropriate, foster parents, and the foster child's parents or guardian. The~~ If visitation occurs in ~~the foster parents do~~ care provider's dwelling, the provider does not have to allow entry to any individual who has been using alcohol, drugs, or any other intoxicating substance, or who attempts a visit in a manner that is not in accordance with the approved visitation plan.
- ~~4.9.~~ ~~The foster parents may not accept other foster children or special education boarding care children, foreign exchange students, or children for supplemental parental care into their family foster home for children without the prior approval of~~ Inform the authorized licensing agent if a child or adult is moving into the dwelling. All changes in the number of ~~persons~~ individuals living in the foster ~~home~~ care provider's dwelling must be reported immediately ~~reported to the authorized agent.~~
- ~~5.10.~~ ~~When~~ Communicate with the supervising agency if a ~~foster~~ child in foster care is placed in need of substitute care during the absence of the foster ~~parents, prior~~ care provider. Prior approval of the substitute care must be given by the supervising agency, ~~not to exceed~~

fourteen calendar days. Prior approval is not required for short periods of substitute care such as a portion of one day. A ~~foster-child in foster care~~ may not be removed from this state without the prior approval of the supervising agency.

~~6.11.~~ ~~The foster parents must make~~Make opportunities available for a ~~foster-child in foster care~~ to attend religious ceremonies chosen by the ~~foster-child in foster care~~, or that child's parents, within the community in which the foster family resides. The foster ~~parents~~care provider must respect and not interfere with the religious belief of the ~~foster-child in foster care~~ and the ~~foster~~ child's family.

~~7.12.~~ ~~Discipline must be~~Engage in appropriate discipline that is constructive or educational in nature and may include diversion, separation ~~from problem situation~~, talk discussions with the ~~foster~~ child in foster care about the situation, praise for appropriate behavior, and gentle therapeutic physical restraint ~~such as holding~~, for providers with proper training.

a. No child in foster ~~child~~care may be kicked, bitten, punched, spanked, shaken, pinched, roughly handled, or struck with an ~~inanimate~~-object by a foster ~~parents~~care provider or any other ~~resident living in the family foster home for children~~individual residing in the family foster provider's dwelling.

b. Cruel and unusual punishments are prohibited.

c. Authority to discipline may not be delegated to or be accomplished by children.

d. Separation, when used as discipline, must be brief and appropriate to the ~~foster-child's~~ age and circumstances of the child in foster care, and when used to discipline a ~~foster~~ child in foster care, must be within hearing of an adult in a safe, lighted, well-ventilated room. A ~~foster-child in foster care~~ may not be ~~isolated~~separated from the household in a locked room or closet.

e. A ~~foster-child in foster care~~ may not be ~~physically~~-disciplined for lapses in toilet training.

f. Verbal abuse or derogatory remarks about a child in foster ~~child~~care, the ~~foster-child's~~ family, race, religion, sexual orientation, gender identity, or cultural background may not be used and are not permitted.

g. A ~~foster-child in foster care~~ may not be force fed unless medically prescribed and administered under a physician's care.

h. Deprivation of means, including food, clothing, shelter, hygiene, and medical care, ~~may not be used as a form of discipline~~ is not permitted.

~~8.13.~~ ~~All~~Maintain confidentiality of all information given to the foster ~~parents~~care provider by the supervising agency or the child in foster ~~child's~~care's family ~~concerning the foster child must remain confidential and~~ Information may not be disclosed to any person without prior approval of the supervising agency.

~~9.14.~~ ~~All family~~Utilize foster care ~~for children~~-maintenance payments ~~must be used~~ to meet the needs of the child in foster ~~child~~care.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-14-06. Child and family team meeting.

Repealed effective April 1, 2024.

- ~~1. Every foster child shall have a permanency plan reviewed by a child and family team that meets not less than once each quarter in which the human service zone, division of juvenile services, or tribe acts as a supervising agency to the foster child.~~
- ~~2. The supervising agency shall invite the foster child's parents, the foster parents, and the guardian ad litem to participate in the child and family team for the foster child unless good cause exists to exclude any person from the planning meeting. The supervising agency shall determine the good cause basis and shall document the basis in the foster child's file.~~
- ~~3. The foster parents shall participate in the child and family team meetings for the foster child. The foster parents shall cooperate in carrying out the objectives and goals of the plan for the foster child in their care. Foster parents may be considered, but are not guaranteed, to be a permanency option for the child. Foster parents shall sign an acknowledgment that federal law establishes a permanency preference for a relative of the foster child.~~
- ~~4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide information concerning the foster child and the child's family.~~
- ~~5. The foster parents and the supervising agency, working in cooperation, must attempt to maintain and improve the relationships between the foster child and the child's family whenever appropriate and possible. The foster parents may not attempt to diminish the relationship between the foster child and the child's parents or between the supervising agency and the foster child.~~

~~**History:** Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; October 1, 2019; July 1, 2020.~~

~~**General Authority:** NDCC 50-11-03~~

~~**Law Implemented:** NDCC 50-11-02~~

75-03-14-07. Background checks required.

Repealed effective April 1, 2024.

- ~~Background checks are required for all adults residing in the family foster home for children:~~
- ~~1. Prior to initial licensure or approval to provide a family foster home for children;~~
 - ~~2. If there is a lapse of license or approved status of the family foster home for children; or~~
 - ~~3. In the case of a foster parent grandfathered in as of August 1, 1999, or after the initial background check was completed, whenever a licensed or approved foster care parent or other adult living in the family foster home for children is known to have been involved in, charged with, or convicted of an offense.~~
 - ~~4. Annually, a child abuse and neglect index check must be completed as part of the licensing renewal process.~~

~~**History:** Effective April 1, 2004; amended effective January 1, 2014; October 1, 2019.~~

~~**General Authority:** NDCC 50-11-03~~

~~**Law Implemented:** NDCC 50-11-02, 50-11-06.8~~

75-03-14-08. Fingerprints excused.

Repealed effective April 1, 2024.

~~—The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.~~

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-14-09. ~~Relative~~Identified relative licensing, approval, and waiver.

~~Upon written application and good cause shown to the satisfaction of the department, the~~Applicants who meet the definition of identified relative, who apply to be an identified relative foster care provider shall comply with this chapter and standards for relative licensing prescribed by the department. The department may grant a waiver from a provision of this chapter to ~~a family~~an applicant to provide foster homecare for children if the ~~proposed foster parents are relatives~~applicant is an identified relative of a foster-child in foster care. ~~No~~A waiver may not be issued if it would result in a danger to the health and safety of any child in foster childcare cared for by the foster-child's identified relatives ~~in the family foster home for children~~. The department shall prescribe the terms of the waiver. A refusal to grant or revoke ~~aan identified relative~~ waiver is not subject to appeal.

History: Effective January 1, 2014; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-14-10. Certification.

Applicants who apply to be a certified foster care provider offering time limited foster care for children shall comply with the standards for certification prescribed by the department.

History: Effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

CHAPTER 75-03-14.1
SHELTER CARE PROGRAM CERTIFICATION

Section

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75-03-14.1-02. Shelter care program certification.

1. An agency may not apply for a shelter care program certification until the department has reviewed the need for additional shelter care programs. To enable the department to make a determination of need for a new shelter care program, the potential applicant shall submit an initial request for application, including the following documentation and information to the department:
 - a. The number, gender, and age range of the residents to be served;
 - b. The employee staffing, including a list of full-time and part-time positions by job titles and description;
 - c. A description of the proposed program;
 - d. A proposed budget; and
 - e. The geographic location of the shelter care program.
2. Upon receipt of initial request for application, the department shall:
 - a. Review the detailed plan for the operation proposed by the agency;
 - b. Ask for additional materials or information necessary for evaluation of need purposes;
 - c. Respond in writing within thirty days of receipt of all required information from the potential agency;
 - d. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is need for additional shelter care program beds, the notice must be accompanied by an authorization for the agency to apply for certification to operate a shelter care program; and
 - e. Inform the potential agency of what is required to move forward with the application process.

3. A shelter care home may not apply for a shelter care program certification as it does not qualify as an agency.
4. If an agency receives an authorization to apply for a shelter care program certification, the agency shall submit its application in the form and manner prescribed by the department.
5. Shelter care program certification applications must include the following documentation or information:
 - a. A detailed plan for the operation of the shelter care program;
 - b. Physical location and address of the shelter care program;
 - c. A copy of the shelter care program floor plan with dedicated sleeping spaces;
 - d. A list of current employees, background check dates, annual child abuse and neglect checks, and full-time and part-time status and job titles;
 - e. A copy of the shelter care program's general comprehensive liability insurance;
 - f. A copy of the shelter care program's vehicular insurance for transportation purposes; and
 - g. Inspection reports.
6. Shelter care program certification is nontransferable and is valid only on the premises and for the specified number of residents indicated on the shelter care program certification, unless otherwise approved by the department.
7. An agency shall submit a new application for a shelter care program certification when there is a change in ownership.
8. Shelter care program certification is available for a maximum period of two years.
9. Shelter care program certification requires an agency to submit an annual application to the department, which will initiate an annual onsite visit ~~each year.~~

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4

75-03-14.1-03. Shelter care program rate.

The department shall establish the fee for service for shelter care programs. The shelter care program shall enter a financial contract with the department, ~~human service zone, tribal social service, or agency case planning for the prospective resident~~ and other eligible referral agencies seeking placement into the shelter care program.

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4

75-03-14.1-04. Shelter care program operations.

The shelter care program shall:

1. Ensure the shelter care program is funded, staffed, and equipped in a manner required for the provision of services;
2. Provide the most recent fiscal year end financial record to the department, upon request;

3. Employ a qualified supervisor of shelter care program operations to oversee program operations, policy, and employee and nonemployee performance;
4. Provide twenty-four-hour supervision for all residents residing in the shelter care program;
5. Provide access to an on-call twenty-four-hour crisis line by which employees may be reached in the event of an emergency placement;
6. Establish policy and procedures specific to operations of a shelter care program, including:
 - a. Policy defining residents served in the shelter care program. The shelter care program shall define the parameters of each population of residents served. The shelter care program shall have a policy to ensure the safety of all residents and allow adequate space to properly separate residents who are children in need of ~~service of~~ protection from children who engage in delinquent acts;
 - b. Policy addressing supervision requirements of residents by employees during each shift, to include:
 - (1) Awake hours; and
 - (2) Overnight hours, requiring awake employees to check on residents at a minimum of every fifteen minutes, and more frequently if the acuity of the resident demands greater supervision;
 - c. Nondiscrimination policy;
 - d. Medication dispensing;
 - e. Resident search criteria;
 - f. At-risk behaviors and protocol surrounding accepting and caring for a resident who has been drinking or using drugs; and
 - g. Process for contacting law enforcement or emergency contacts, as needed;
7. Establish disaster planning, including protocol for when the shelter care program experiences:
 - a. Power outage;
 - b. Fire;
 - c. Winter blizzard conditions;
 - d. Flood; or
 - e. Tornado;
8. Establish a policy to ensure proper and efficient procedure in the event the shelter care program would cease operations, including:
 - a. Notification to the department at least sixty days before closure;
 - b. Notification to community partners at least thirty days before closure; and
 - c. Identification of a depository in North Dakota to maintain the retention of the shelter care program's fiscal, employee, nonemployee, and resident files; ~~and~~

9. Notify the department, in writing, of the corrective action the shelter care program has taken, or plans to take, to comply with any resulting recommendations from the institutional child protection team. The shelter care program shall make assurances that revised practice will reduce the risk of the incident or sentinel event reoccurring. The shelter care program shall respond within thirty days of receiving written notification of the indicated determination; and

10. Establish written policies specifying how to proceed if a current or former employee or nonemployee is known to be:

a. Involved in any capacity in a reported incident of institutional child abuse or neglect;

b. Involved in any capacity in a reported incident of suspected child abuse or neglect;

c. The subject in a child abuse or neglect report that occurred outside the facility, for which the subject has been confirmed to have abused or neglected a child; or

d. Found guilty of, pled guilty to, or pled no contest to a criminal offense.

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4

75-03-14.1-05. Employees and nonemployees.

1. The shelter care program clearly shall define, in writing, the roles and responsibilities of the employees and nonemployees assuring the health and safety of the resident and coordination of the resident's safe return to the custodian, parent, or guardian.

2. The shelter care program shall establish policy and procedures for employee and nonemployee roles and responsibilities, including:

a. Initial fingerprint-based criminal background checks for employees and a criminal background check for nonemployees;

b. Annual child abuse and neglect checks;

c. Job descriptions; and

d. Assigned shifts and protocol for shift changes.

~~3. The shelter care program shall make an offer of employment to an employee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the shelter care program may choose to provide training and orientation to an employee. However, until the approved background check results are placed in the employee file, the employee only may have supervised interaction with residents.~~

~~4.~~ A shelter care program shall hire a supervisor of shelter care program operations and the supervisor:

a. Must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have two years of related work experience in administration;

b. Shall ensure the shelter care program has written policy and procedure;

c. Shall oversee daily operations;

d. Shall administer admission and discharge criteria; and

e. Shall provide adequate supervision to all employees and nonemployees.

~~5.4.~~ A shelter care program shall hire employees and the employees:

- a. Must be at least twenty years of age;
- b. Must have a high school diploma or equivalent;
- c. Shall assure and be devoted to the health and safety of each resident in placement and coordination of the resident's safe return to the custodian, parent, or guardian;
- d. Shall achieve the competencies necessary to meet the needs and engage appropriately with each resident in placement;
- e. Shall prepare meals;
- f. Shall organize activities and structure a daily routine for the resident in placement; and
- g. Shall document a daily activity log to share with the custodian, parent, or guardian.

~~6.5.~~ A shelter care program shall ensure there are adequate employees working to meet the minimum employee-to-resident ratios, including:

- a. A rotating on-call employee who must be available twenty-four hours a day, seven days a week; and
- b. Regardless of awake or overnight hours, the shelter care program must have no fewer than one employee for each six residents in placement.

6. A shelter care program, utilizing nonemployees, shall:

- a. Ensure nonemployees are at least twenty years of age;
- b. Develop and provide a copy of a description of nonemployee duties and specified responsibilities;
- c. Designate an employee to supervise and evaluate nonemployees;
- d. Develop a plan for the orientation and training of nonemployees, including the philosophy of the shelter care program and the needs of the residents and the residents' families;
- e. Develop a policy stating nonemployees may support employees, but may not depend on nonemployees to carry out the duties of the certified shelter care program on a permanent basis;
- f. Develop a policy stating nonemployees may be counted as an employee for purposes of employee-to-resident ratio requirements imposed by this chapter, if all equivalent training requirements are met;
- g. Develop a policy stating nonemployees shall create records of incidents that occur during their presence at the shelter care program to the same extent employees are required to create such records; and
- h. Conduct a criminal background check on all nonemployees with direct contact with residents.

7. The shelter care program shall maintain a file on each employee; including:

- a. Employment application, including a record of previous employment;

- b. Results of an initial fingerprint-based criminal background check and subsequent background checks as determined necessary;
- c. Results of the initial child abuse or neglect record, and annually thereafter;
- d. A job description specifying the employee's roles and responsibilities;
- e. A statement signed by the employee acknowledging the confidentiality policy;
- f. Documentation of an annual training record detailing the date, topic, and length of presentation; and
- g. Evidence of the employee having read and received a copy of the law and shelter program procedures requiring the reporting of suspected child abuse and neglect, initially upon hire and annually thereafter.

8. The shelter care program shall maintain a file on each nonemployee, including:

- a. Personal identification information;
- b. The results of a criminal background check, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
- c. A description of duties;
- d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;
- e. A statement signed by the nonemployee indicating the nonemployee has read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect pursuant to North Dakota Century Code chapter 50-25.1, initially and annually thereafter; and
- f. A statement signed.

- ~~8.9.~~ The shelter program shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4, 50-06-01.10

75-03-14.1-05.1. Background check and criminal conviction - Effect on operation of agency or employment or placement by agency.

1. The department requires an initial fingerprint-based criminal background check for each employee with direct contact with residents and a criminal background check for each nonemployee with direct contact with residents. Subsequent fingerprint-based background checks are not required for an employee who maintains continuous employment at the shelter care program unless the program or the department determines a need exists to conduct a subsequent investigation.
2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check and criminal background check. An annual child abuse and neglect index must be completed and placed in the employee or nonemployee file.
3. A shelter care program supervisor may not be, and a shelter care program may not employ or place, in any capacity that involves or permits contact between an employee or nonemployee

and any resident cared for by the shelter care program, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; 12.1-41, Uniform Act on Prevention of Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if a class A or B felony under subsection 2 of that section; 12.1-22-02 burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all criminal convictions has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on an individual's ability to provide shelter care for children.
 5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; or chapter 19-03.1, Uniform Controlled Substances Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine an individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions. The department is not compelled to make such determination.
 6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
 7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

a. Common knowledge in the community;

b. Acknowledged by the individual; or

c. Discovered by the authorized agent or department as a result of a background check.

8. The department may request a fingerprint-based or a criminal background check if an employee or nonemployee of the certified shelter care program is known to have been involved in, charged with, or convicted of an offense.

9. The department shall review fingerprint-based criminal background check results as follows:

a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel.

c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

e. The final decision of the review panel may not be appealed.

10. The shelter care program shall make an offer of employment to an employee conditioned upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the shelter care program may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee is limited to supervised interaction with residents.

11. The department may excuse an employee from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an employee is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the employee lived during the eleven years preceding the signed authorization for the background check.

12. A shelter care program employee or nonemployee shall comply with this section or must be an employee otherwise qualified and employed by a certified shelter care program prior to April 1, 2024.

History: Effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4, 50-06-01.10

75-03-14.1-06. Employee and nonemployee training.

Shelter care programs shall provide training to employees and nonemployees which includes:

1. Initial ~~employee~~ orientation topics of:

a. Overall general shelter care program policy and procedures;

- b. Resident's emotional and physical needs;
 - c. Resident's daily routine, activities, transportation, and meals;
 - d. Roles and responsibilities of employees versus nonemployees;
 - e. Expected employee and nonemployee conduct toward residents;
 - ~~e-f.~~ Expected resident conduct while residing onsite;
 - ~~f-g.~~ Shelter care program's behavior management, including de-escalation techniques;
 - ~~g-h.~~ Protocol for observing and reporting resident behavior;
 - ~~h-i.~~ Protocol for identifying and reporting of child abuse and neglect, including completion of child abuse and neglect mandated reporter training;
 - ~~i-j.~~ Suicide prevention, including identifying signs and shelter program response;
 - ~~j-k.~~ Fire safety and evacuation procedures;
 - ~~k-l.~~ Disaster plan;
 - ~~l-m.~~ Resident search procedures and policies;
 - ~~m-n.~~ Confidentiality standards;
 - ~~n-o.~~ Protocol for reporting a runaway;
 - ~~o-p.~~ Protocol for emergency medical procedures;
 - ~~p-q.~~ Protocol for shelter care program security and access to visitors; and
 - ~~q-r.~~ Interest in becoming certified for medication distribution;
2. Required certification trainings, upon hire and updated accordingly thereafter, including:
 - a. First-aid training; and
 - b. Cardiopulmonary resuscitation training;
 3. Institutional child abuse and neglect training, which includes how employees and nonemployees are to report incidents and sentinel events and what to do in the case of an institutional child abuse and neglect indicated determination; and
 4. Other trainings determined necessary by the shelter care program to provide safe care to a resident.

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4

75-03-14.1-07. Buildings and grounds.

A shelter care program shall comply with all state, county, and local building, zoning, safety, and sanitation laws, codes, and ordinances. The shelter care program may install automatic sprinklers in bedrooms, hallways, and areas required by the fire code. If an automatic sprinkler system is installed, it must be inspected annually and a copy of the inspection must be provided to the department. The shelter care program must have:

1. An inspection by the local fire department or the state fire marshal's office as determined necessary for the dwelling to ensure fire safety;
2. A ~~proper~~2A 10BC fire extinguisher ~~on each floor~~certified by Underwriters' Laboratories and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was completed;
3. ~~One smoke detector in each space determined necessary by the local fire department or~~Smoke detectors installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire ~~marshal~~code;
4. ~~One carbon~~Carbon ~~monoxide detector on each floor~~monoxide detectors, where applicable, installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code;
5. A clean, comfortable, sanitary, and safe dwelling with adequate lights, heat, and ventilation;
6. Furnishings suitable to the needs of all residents;
7. Recreational space and equipment that is safe, functional, and available for all residents;
8. One centrally located living room for the informal use of residents;
9. A dining room area large enough to accommodate the number of residents served;
10. A private space for individual interviewing and case meetings for ongoing program activities;
11. Sleeping accommodations that ensure:
 - a. At least one bed for each resident;
 - b. Clean linens and bedding for each resident;
 - c. Appropriate privacy and separation of resident sleep space dependent on age and gender;
 - d. Individual storage space to accommodate the resident's clothing and other personal belongings; and
 - e. For bedrooms, at least one window that opens to the outside. A bedroom located in a basement with over half its outside walls below grade and no door opening directly to the outside may not be used for sleeping, unless the bedroom space has at least one egress window;
12. One complete bathroom to include a toilet, sink, and a tub or shower;
13. A kitchen area and proper food storage ~~that meets the standards prescribed by the state department of health for food and beverage establishments. If applicable, the department may request a health inspection.~~ A shelter care program ~~annually~~ shall document compliance with ~~these~~sanitation standards and provide documentation to the department;
14. Storage to lock all medications;
15. Storage to lock all toxic cleaning supplies, aerosols, chemical, agricultural, and ground maintenance chemicals, pesticides, and other poisons;

16. Storage to lock shampoos, body wash, hair products, and hand sanitizers when not distributed to resident for use. Shelter care programs shall distribute shampoos, body wash, hair products, and hand sanitizers in a limited quantity;
17. Policy and signs that address the prohibition of the use of alcohol on the premises and prohibition of the use of tobacco and vaping within the shelter care program facilities and vehicles and in the line of sight of the residents;
18. Policy and signs that prohibit firearms in program or living areas on the premises. Firearms kept at any other location on the shelter care program premises must be stored in a locked and secure area; and
19. Policy that all pet inoculations comply with local and state requirements.

History: Effective January 1, 2022; [amended effective April 1, 2024](#).

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4

75-03-14.1-08. Admissions and discharges.

1. A shelter care program shall have written resident admission and discharge policies and procedures that describe:
 - a. The eligibility and criteria for admitting a resident;
 - b. Procedures for completing initial screenings upon admission, including:
 - (1) Mental health screening; and
 - (2) Basic personal health screening, which may include documenting height, weight, and identification of any distinct markings, such as resident's birthmark, tattoos, bruises, or cuts;
 - c. Procedure for discharge planning with the custodian, parent, or guardian upon date of admission; and
 - d. Procedures for accepting an extension request.
2. The shelter care program shall provide documentation of a discharge report to the custodian, parent, or guardian which includes:
 - a. Date of discharge;
 - b. Detailed location and contact of where the resident is being discharged to; and
 - c. Details of services or community referrals made by the shelter care program.
3. A shelter care program placement may not exceed seven days from date of admission unless an extension request is approved by the department. The shelter care program supervisor shall submit extension requests to the department for approval. The department may approve an extension request for up to an additional seven days. [The department may grant an extension request beyond seven days](#) upon such terms as the department may prescribe. A refusal to grant an extension request is not subject to appeal.

History: Effective January 1, 2022; [amended effective April 1, 2024](#).

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4, 50-11-03.2

75-03-14.1-09. Resident files.

Upon placement, a resident's file is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The shelter care program shall adopt a policy regarding the retention of the resident file. The resident file must include:

1. Admissions application, including:
 - a. Resident's full name;
 - b. Date of birth;
 - c. Name and contact information of the referral;
 - d. Name and contact information of the resident's custodian, if applicable;
 - e. Name and contact information of the resident's parent or guardian;
 - f. Name and dosage of current medication; and
 - g. ~~Written~~Documented consent to:
 - (1) Complete initial screenings;
 - (2) Provide first aid;
 - (3) Transport to emergency room, if applicable; and
 - (4) Distribute medications;
2. Resident photo;
3. Documentation of a daily activity log detailing the resident's time in the shelter care program; and
4. Documentation of a discharge report, including the individual who the resident was discharged to, date, and location.

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4, 50-06-15, 50-11-05

75-03-14.1-11. Incident and sentinel event reporting.

1. The shelter care program must have written policy outlining the documentation of incidents and sentinel events that occur while the resident is in placement. The policy must include:
 - a. Reporting procedures of an incident as an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, residents, or employees, or nonemployees; and
 - b. Reporting procedures of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury not related to the natural course of a resident's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.
2. The shelter care program shall document the incident or sentinel event in the resident's file within twenty-four hours and notify the resident's custodian, parent, or guardian immediately or within twelve hours.

3. The shelter care program shall maintain a log of written reports of incidents and sentinel events involving residents.
4. The shelter care program shall provide employees or nonemployees time at the beginning of each shift to be informed of or review reports of incidents and sentinel events occurring since the employee's or nonemployee's last shift.
5. The shelter care program shall provide employees or nonemployees and residents time to debrief the incident and sentinel event with supervisors.

History: Effective January 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-01.4

CHAPTER 75-03-17

75-03-17-01. Definitions.

1. "Accredited" means to be accredited and in good standing by an independent, not-for-profit accreditation organization approved by the United States department of health and human services and the department, including the commission on accreditation of rehabilitation facilities, the joint commission, and the council on accreditation.
2. "Active treatment" means a strength based, culturally competent, and medically appropriate treatment designed to meet immediate needs with specific outcome and return to the family or another less restrictive community setting as soon as clinically possible and when treatment in a facility is no longer medically necessary.
3. "Aftercare" means followup support and services provided to a resident and family after discharge from a facility.
4. "Applicant" means the entity requesting licensure as a psychiatric residential treatment facility for children under this chapter.
5. "Child", "children", or "resident" means ~~a person~~an individual or ~~persons~~individuals under the age of twenty-one.
6. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery.
7. "Condition" means a violation of the requirements of any applicable law or regulation.
8. "Department" means the department of health and human services.
9. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of ~~a person~~an individual with a mental illness using diagnostic, interview, and other relevant assessment techniques.
10. "Discharge planning" means the multidisciplinary process that begins at the time of admission that identifies the child's and family's needed services and supports upon discharge.
11. "Employee" means an individual compensated by the facility to work, including contracted service providers who conduct onsite training, treatment groups, individual therapy, or other facility services.
12. "Family-driven" means the family has a primary decisionmaking role in the care of its own children.
13. "Individual person-centered treatment plan" means a youth-guided and family-driven written plan of intervention, treatment, and services that is developed under clinical supervision on the basis of a diagnostic assessment.
14. "Individual with a mental illness" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Individual with a mental illness" does not include an individual with intellectual disabilities of significantly subaverage general intellectual functioning which originate during the developmental period and is associated with impairment in adaptive behavior, although an individual who has intellectual disabilities may also be an individual who has a mental illness. A substance use disorder does not per se constitute mental illness, although an individual who has a substance use disorder may also be an individual who has a mental illness.

15. "Initial license" means a license for a new facility that is in effect for one year.

15:16. "Nonemployee" means an individual, including a volunteer or student intern, who is not compensated by the facility.

~~16. "Person with a mental illness" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Person with a mental illness" does not include an individual with intellectual disabilities of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who has intellectual disabilities may also be an individual who has a mental illness. A substance use disorder does not per se constitute mental illness, although an individual who has a substance use disorder may also be an individual who has a mental illness.~~

17. "Psychiatric residential treatment facility for children" or "facility" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four-hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must be in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, subpart D, part 441 and subpart G, part 483.

18. "Residential treatment" means a twenty-four-hour a day program under clinical supervision in a community residential setting other than an acute care hospital, for the active treatment of **persons****individuals** with mental illness.

19. "Sentinel event" means any serious injury or trauma to a resident, death of a resident, or inappropriate sexual contact.

20. "Serious injury" means any significant impairment of the physical condition of the child as determined by qualified medical personnel. This includes burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

21. "Serious risk of harm" means a substantial likelihood of:

- a. Suicide, as manifested by current suicidal threats, attempts, or significant depression creating immediate risk of suicide;
- b. Killing or inflicting serious bodily harm to self or another **person****individual**, as manifested by current act; or
- c. Substantial deterioration in physical health or substantial injury, disease, or death based on current poor self-control or judgment.

22. "Special treatment procedures" are defined as follows:

- a. "Drug used as a restraint" means any drug that:
 - (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
 - (2) Has a temporary effect of restricting the resident's freedom of movement; and

- (3) Is not a standard treatment for the resident's medical or psychiatric condition.
- b. "Emergency safety interventions" means the use of restraint or seclusion as an immediate response to an emergency safety situation.
 - c. "Emergency safety situation" means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.
 - d. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident cannot easily remove that restricts freedom of movement or normal access to the resident's body.
 - e. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort the resident, or holding a resident's hand to safely escort a resident from one area to another.
 - f. "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.
 - g. "Restraint" means a personal restraint, mechanical restraint, or drug used as a restraint.
 - h. "Seclusion" means the confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.
 - i. "Timeout" means the voluntary option of a resident to move to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.
23. "Tier 1 mental health professional" means a licensed psychiatrist, licensed psychologist, licensed physician or a physical assistant, or an advanced practice registered nurse.
24. "Trauma-informed" means an understanding of the prevalence of traumatic experiences in a child who receives mental health services and of the profound neurological, biological, psychological, and social effect of trauma and violence on the child being treated.
25. "Youth-guided" means a child has the right to be empowered, educated, and given a decisionmaking role in the care of the child's own life.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; July 1, 2012; April 1, 2014; April 1, 2016; July 1, 2022; [April 1, 2024](#).

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-01, 25-03.2-03

75-03-17-02. Procedures for licensing.

1. **Application.** An application for license or for renewal as a facility must be submitted to the department. The department shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials the department may require, including:
 - a. A comprehensive list and description of the program plan which includes:
 - (1) A plan demonstrating compliance with this chapter;

- (2) A copy of current accreditation certification, accreditation letter, and findings report;
 - (3) The facility's organizational chart;
 - (4) The treatment modalities offered, including milieu therapy, family therapy, psychopharmacology, and psychotherapy;
 - (5) Prohibited treatment modalities; and
 - (6) The services provided directly by the facility and those provided by other community resources, including special education as required by law and contracted services.
- b. A copy of all policies and procedures as required by this chapter with a detailed plan for their implementation.
 - c. A list of licensed professionals employed or to be employed by or contracting with the facility.
2. **License contents.** The license to operate a psychiatric residential treatment facility for children must specify:
- a. The name of the licensee;
 - b. The premises for which the license is applicable;
 - c. The number of children who may reside at the facility at any one time;
 - d. The date of expiration of the license;
 - e. The facility license number; and
 - f. The name of the accreditation body.
3. **Initial license and license renewal.**
- a. An initial license for a new facility is in effect for one year. Subsequent licenses shall be renewed at least once every two years, either through a full onsite license review or the facility may receive deemed status, at the discretion of the department.
 - b. The license is valid only on the premises indicated and is not transferable.
 - c. License renewals are based on the outcomes of the department's licensure reviews, the facility's ongoing compliance with the licensure rules set forth in this chapter, and the facility's accreditation standings. The facility must list the department as a confidential inquiry for the accrediting body on their accreditation intent to survey prior to each accreditation review. If the accrediting body determines a facility to not be in good standing, the facility shall report that determination to the department within five working days after the facility has learned of that determination.
 - d. A facility shall submit a license renewal application on a form required by the department to the department licensor fifteen days prior to the date the department has notified the facility will be the date the facility's licensure review will begin.
4. **Provisional license.** The department may issue a provisional license, effective for up to ninety days, to a facility that has failed to comply with any of the standards of this chapter or with any other state law or regulation, compliance with which is required for licensure. The facility will have thirty days from the issuance of the provisional license to submit a written plan

of correction for the department's review and approval. The department may perform an onsite followup visit to assure that the standards have been met by the facility.

- a. The department may renew a provisional license if the licensee demonstrates to the department that it has made progress towards compliance and can be fully compliant within the next ninety days. A provisional license may be renewed but may not exceed one hundred eighty consecutive days.
 - b. When a facility operating under a provisional license notifies the department that it has corrected its deficiencies, the department must ascertain whether all deficiencies have been corrected. Upon finding compliance and sustainability, the department shall issue an unrestricted license for the balance of the licensing period.
 - c. The department may apply restrictions to a provisional license to limit the number of children in residence or the ages of the children in residence while the provisional license is in effect.
5. **License display.** A facility shall display its license in a conspicuous place within the facility.
6. **Notice of change.** A facility shall notify the department in writing at least thirty days before any of the following changes occur:
- a. Transfer of or change in ownership.
 - b. Transfer of operating rights, including a lease of the facility where the lessor retains no control of the operation or management of the facility.
 - c. Change in the name of the facility.
7. **Denial and revocation of a license.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a **person's** **an individual's** ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children, or that, following conviction of any offense, the **person** **individual** is not sufficiently rehabilitated under section 12.1-33-02.1.
8. **Appeal.** An applicant may appeal a license denial or a department decision not to allow an increase or decrease in bed capacity in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.
9. **License report procedures.**
- a. Within thirty days of an onsite review of a facility, the department shall send a license report to the facility that was reviewed.
 - b. A license report must contain a description of the programs and services reviewed, strengths, concerns, recommendations, and conditions.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022; [April 1, 2024](#).

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, [25-03.2-04](#), 25-03.2-05, [25-03.2-08](#)

75-03-17-03. Organization and administration.

1. **Governing body.** The applicant must have a governing body that designates or assigns responsibility for the operation, policies, program, and practice of the facility. The governing body shall:
 - a. Define:
 - (1) The facility's philosophy;
 - (2) The facility's purpose;
 - (3) The facility's function;
 - (4) The geographical area served by the facility;
 - (5) The ages and types of children accepted for care by the facility; and
 - (6) The clinical disorders addressed by the facility's program;
 - b. Ensure that all policies and procedures required by this chapter are in writing and on file at the facility and are accessible to all employees, family members, and residents;
 - c. Develop a records retention policy and procedures consistent with state and federal law;
 - d. Assure that all vehicles transporting children are:
 - (1) Subject to routine inspection and maintenance;
 - (2) Licensed by the state motor vehicle department;
 - (3) Equipped with seatbelts for every passenger;
 - (4) Equipped with a first-aid kit and a fire extinguisher;
 - (5) Carrying no more individuals than the manufacturer's recommended maximum capacity;
 - (6) Disability accessible where appropriate; and
 - (7) Driven by an individual who holds a valid driver's license, of a class appropriate to the vehicle driven, issued by the driver's jurisdiction of residence; and
 - e. Obtain sufficient insurance, including:
 - (1) Liability insurance covering bodily injury, property damage, personal injury, professional liability; and
 - (2) Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. **Quality improvement.** The applicant and facility shall implement a quality improvement program. The applicant and facility shall submit the quality improvement program and evaluations of the program to the department for review at a minimum of every six months. The applicant shall create policies and procedures and have them in place to implement its facility's quality improvement program. The facility must monitor and evaluate the quality and appropriateness of care of children, and identify performance indicators that will be monitored to assess the program's effectiveness. The quality improvement program must include:

- a. A plan for child and employee safety and protection;
 - b. A method to evaluate personnel performance and the utilization of personnel;
 - c. A plan to ensure the facility accesses and maintains copies of the current license of all employees, contract workers, and consultants when relevant for that ~~person's~~individual's role or function;
 - d. A system of credentialing, granting, and withholding employee privileges;
 - e. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;
 - f. A method to review the appropriateness of admissions, care provided, and employee utilization;
 - g. A plan for the review of individual treatment plans that ensures compliance with paragraph 3 of subdivision b of subsection 3 of section 75-03-17-05;
 - h. A plan for program evaluations that includes measurements of progress toward the facility's stated goals and objectives; and
 - i. A method to evaluate and monitor standards of resident care.
3. **Outcomes and data collection.** The department shall require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer facilities a continuous quality improvement process that measures and monitors the safety, wellbeing, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements. The policy must also include how a facility will respond to identified data outcomes by utilizing one or more facility improvement plans every six months.
4. **Children's case records.** The facility shall establish and implement policies and procedures to ensure the facility maintains a confidential record for each child which must be current and reviewed monthly. Each record must contain:
- a. An application for service;
 - b. A social history;
 - c. A release of information and medical treatment consent form signed by a person who may lawfully act on behalf of the child and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07;
 - d. The name, address, and telephone number of individuals to be contacted in an emergency;
 - e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric evaluations which occurred prior to the placement;
 - f. An explanation of custody and legal responsibility for the child and relevant court documents, including custody or guardianship papers;
 - g. Documentation on all medical examinations, including immunizations, all medications received, allergies, dental examinations, and psychological and psychiatric evaluations received during placement;

- h. Documentation of medical care given during placement as a result of an admission to the hospital or inpatient care, including:
 - (1) Hospitalization admission and discharge records to include history and physical;
 - (2) Medications administered, with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and
 - (3) Significant illnesses or accidents;
- i. Records of the annual medical examination required under section 75-03-17-07; and
- j. A written agreement between a person who may lawfully act on behalf of the child and the facility and a record that the person who acted on behalf of the child received a copy. The agreement must include:
 - (1) A statement as to who has financial responsibility;
 - (2) How payments are to be made to cover the cost of care;
 - (3) Which items are covered by the normal or regular facility charges for care;
 - (4) Medical arrangements, including the cost of medical care;
 - (5) Visiting arrangements and expectations;
 - (6) Arrangements for clothing and allowances;
 - (7) Arrangements for therapeutic leave;
 - (8) Regulations about gifts permitted;
 - (9) Arrangements for participation by the person who acted on behalf of the child through regularly scheduled interviews with designated employee;
 - (10) The facility's policy on personal monetary allowance to be provided to the child at the facility;
 - (11) Records of special treatment orders; and
 - (12) Educational arrangements agreed upon discharge.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022; [April 1, 2024](#).

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-07. Medical care.

The facility shall institute policies and procedures to address the medical care for each child during placement at the facility, including:

1. **Medical examination.** Each child must have a medical examination within thirty days prior to admission or within seventy-two hours of admission.
2. **Immunizations.** Each child must have current immunizations as required by North Dakota Century Code section 23-07-17.1.

3. **Medical care arrangements.** A facility shall make arrangements with a physician for medical care of each child.
4. **Annual medical examination.** Each child shall have a medical examination at least annually.
5. **Employee instruction.** The facility shall train employees what medical care, including first aid, may be given by employees without specific orders from a physician. The facility shall instruct employees how to obtain further medical care and how to handle emergency cases.
6. **Hospital admission.** Each facility shall institute policies and procedures regarding transfers and discharges from an admission to the hospital. A facility's policies and procedures must include arrangements made with a hospital for the admission of children from the facility in the event of serious illness or an emergency.
7. **Hospitalization or death reports.** A facility shall report all hospitalizations immediately to an individual who lawfully may act on behalf of the involved child. The facility shall report any death immediately to the department, an individual who lawfully may act on behalf of the child, a law enforcement agency, and the county coroner. The facility shall document these contacts in the involved child's case file.
8. **Prescription labels.** The facility shall obtain prescribed medications on an individual prescription basis and labeled according to state and federal rules.
9. **Administration of medications.**
 - a. The facility shall institute policies and procedures for guidance in the administration of all medications. Medications must be administered by a designated employee who is medication-certified. All medications must be labeled and stored in a locked cabinet, with the keys for the cabinet kept under the supervision of the designated employee assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with each child's name.
 - b. The facility shall return medications belonging to a child to the person who lawfully may act on behalf of the child upon discharge, or the designated **personindividual** in charge of medication storage shall dispose of the medications according to the facility's policies and procedures for the disposal of medications. The facility's policies and procedures for the disposal of medications must be in accordance with state and federal requirements for the disposal of medications.
 - c. The facility may possess a limited quantity of nonprescription medications. The medications must be ordered by a physician and administered under the supervision of medication-certified employee.
 - d. (1) The facility shall obtain written consent, including via electronic mail, or shall obtain verbal consent witnessed by another **personindividual**, from a person who lawfully may act on behalf of the child prior to administering:
 - (a) A newly prescribed medication to the child except in an emergency situation;
 - (b) A psychotropic medication; or
 - (c) A medication dosage or dosage range change.

A person who lawfully may act on behalf of the child who receives medication must be informed of benefits, risks, and the potential side effects of all prescribed medication. The facility shall obtain written consent within fourteen days verifying

verbal consent received. The facility shall document and file all consents in the child's case file.

- (2) The facility shall institute policies and procedures governing the use of psychotropic medications, which require documentation in the case file justifying the necessity and therapeutic advantages for the child receiving psychotropic medication. Documentation must reflect that a trauma screening has been completed and that the symptomology that the psychotropic medication is attempting to treat is not more effectively treated through therapeutic interventions that specifically address symptomology related to trauma.
- e. Upon admission, when a new psychotropic medication is prescribed, and when a psychotropic medication is discontinued, a child's psychotropic medication regime must be reviewed by the attending psychiatrist every seven days for the first thirty days and every thirty days thereafter. Additionally, the facility's nursing staff shall complete an involuntary movement assessment prior to the start of, or a change in the dose of, a psychotropic medication. An involuntary movement assessment must be repeated every three months, or sooner if determined necessary, following completion of the initial involuntary movement assessment to monitor the child for side effects of the psychotropic medication.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022; [April 1, 2024](#).

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16.2. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee, contracted service providers, or nonemployee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; ~~or 12.1-40~~[12.1-41, human trafficking](#); [Uniform Act on Prevention of and Remedies for Human Trafficking](#); [of 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter](#); or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; [12.1-20-12.3, sexual extortion](#); [12.1-21-01, arson](#); 12.1-22-01, robbery, [if class A or B felony under subsection 2 of that section](#); 12.1-22-02, burglary, [if a class B felony under subdivision b of subsection 2 of that section](#); 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; [12.1-31-07, endangering an eligible adult - penalty](#); [12.1-31-07.1, exploitation of an eligible adult - penalty](#); 14-09-22, abuse ~~or neglect~~ of a child;[or 14-09-22.1, neglect of a child](#);
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

- (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction~~, for all other criminal convictions has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. A facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 1.
3. The department has determined the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.
4. In the case of ~~a misdemeanor simple assault~~ offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; or chapter 19-03.1, Uniform Controlled Substances Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction~~ for all other criminal convictions. The department may not be compelled to make such determination.
5. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
6. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Discovered by the facility, authorized agent, or department as result of a background check.
7. The facility shall require a fingerprint-based criminal background check and child abuse or neglect index be completed for each employee and nonemployee.
8. The facility shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background checks, a facility may choose to provide training and orientation to an employee or nonemployee. However, until the completed and approved required background check results are placed in the employee or nonemployee file, the employee or nonemployee shall only have supervised interaction with any child cared for by the facility.

9. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, plead guilty to, or pled no contest to ~~an~~ a criminal offense.
10. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or facilities, the facility shall request a reference from all previous group home, residential child care facility, and facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.
11. The facility shall perform a background check for reported suspected child abuse or neglect each year on each facility employee. Each employee, including direct care staff, supervisors, administrators, administrative, and facility maintenance staff, shall complete a department-approved authorization for child abuse and neglect background check form no later than the first day of employment and annually thereafter to facilitate the background checks required under this subsection.
12. The department may excuse ~~a person~~ an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If ~~a person~~ an individual is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.
13. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section.

14. Fingerprint-based criminal background check results must be reviewed as follows:

- a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel.
- c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
- e. The final decision of the review panel may not be appealed.

History: Effective April 1, 2016; amended effective July 1, 2022; April 1, 2024.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-04.1, 25-03.2-07

75-03-17-17. Facility employee.

1. The facility's employees shall include:
 - a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;

- b. A program director who has a ~~master's~~bachelor's degree in social work, psychology, or in a related field with ~~two years of~~ professional experience ~~in the treatment of~~working with children suffering from mental illnesses or emotional disturbances;
 - c. Facility care employees who are at least twenty-one years of age and have sufficient training and demonstrated skills experience to perform assigned duties;
 - d. A sufficient number of qualified psychiatric professionals, employed or contracted, to meet the resident needs; and
 - e. Educators, where onsite education is provided.
2. Nonemployees may be used to augment and assist other employees in carrying out program or treatment plans. Nonemployees shall receive orientation training regarding the program, employees, and children of the facility, and the functions to be performed.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2016; July 1, 2022; April 1, 2024.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-18. Safety, buildings, and grounds.

1. **Compliance with fire, sanitation, and zoning standards.** An applicant shall demonstrate compliance with applicable state or local fire, sanitation, and zoning standards. The premises to be used must be in fit, safe, and sanitary condition and properly equipped to provide good care and treatment.
- a. Fire. For fire safety, the facility shall meet the applicable life safety standards established by the city. If the city has not established life safety standards, the facility shall comply with chapter 21 of the Life Safety Code of the national fire protection association, 1985 edition, and amendments thereto.
 - (1) Compliance is shown by submitting the written report of an authorized fire inspector, following an initial or subsequent inspection of a building which states the:
 - (a) Rated occupancy and approval of the building for occupancy; or
 - (b) Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy.
 - (2) All electrical and heating equipment must be approved by underwriters laboratories, incorporated, or another nationally recognized testing laboratory.
 - b. Sanitation. Compliance with sanitation standards is shown by submitting a statement prepared by a licensed environmental health professional or authorized public health officer, following an initial or subsequent annual inspection, that the building's plumbing, sewer disposal, water supply, milk supply, and food storage and handling comply with the applicable rules of the ~~state~~-department ~~of health~~ and the department of environmental quality.
 - c. Zoning. Compliance with zoning requirements is shown by submitting a statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances.
2. **Safety.** Safety requirements of a facility must include:
- a. Prohibition of smoking on the premises;

- b. Procedures for water safety where swimming facilities are on the grounds;
 - c. A copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and first-aid supplies;
 - d. Prohibiting a child's possession and use of any firearms while at the facility;
 - e. Advising children of emergency and evacuation procedures upon admission and thereafter every two months;
 - f. Training in properly reporting a fire, in extinguishing a fire, and in evacuation from the building in case of fire. Fire drills must be held monthly. Fire extinguishers must be provided and maintained throughout each building in accordance with standards of the state fire marshal; and
 - g. Telephones with emergency numbers posted by each telephone in all buildings that house children.
3. **Buildings and grounds.** The facility must have sufficient outdoor recreational space, and the facility's buildings must meet the following standards:
- a. Bedrooms. Each child must have eighty square feet [7.43 square meters] in a single sleeping room, and sixty square feet [5.57 square meters] per individual in a multiple occupancy sleeping room; the child's own bed, and bed covering in good condition; and a private area to store the child's personal belongings. A facility may not permit more than two children in each sleeping room; children to sleep in basements or attics; nonambulatory children to sleep above the first floor; and a child to share a bedroom with a child of the opposite sex.
 - b. Bathrooms. The facility's bathroom facilities must have an adequate supply of hot and cold water; be maintained in a sanitary condition; have separate toilet and bath facilities for male and female children, and employees; and have one bathroom that contains a toilet, washbasin, and tub or shower with hot and cold water for every four children.
 - c. Dining and living rooms must have suitably equipped furnishings designed for use by children within the age range of children served by the facility.
 - d. The facility shall provide sufficient space for indoor quiet play and active group play.
 - e. The facility shall provide adequate heating, lighting, and ventilation.
 - f. Employee quarters must be separate from those of children, although near enough to assure proper supervision of children.
 - g. A facility shall provide a quiet area for studying.
 - h. A facility shall lock all outbuildings on the property at all times when not in use by facility employees.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; [April 1, 2024](#).

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-20. Rights and obligations of the applicant.

- 1. **Right to apply for license.** An applicant has the right to apply to receive a license to operate a facility under this chapter.

2. **Entry and inspection.**

- a. The department may evaluate a facility's compliance with this chapter at any time through:
 - (1) An announced or unannounced onsite review; or
 - (2) A request for written documentation verifying compliance.
- b. The applicant shall allow authorized representatives of the department to enter any of the applicant's buildings or facilities to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the facility unless the effectiveness of the inspection would be substantially diminished by prearrangement.

3. **Access to records.** The applicant shall allow duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

4. **Denial of access to facilities and records.** Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's or licensee's state of compliance with the rules of the department shall have its license revoked or application denied.

5. **License refusal or revocation.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon ~~a person's~~an individual's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children or that, following conviction of any offense, the ~~person~~individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.

6. **Appeal.** An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.

7. **Deemed status.** The department may recognize "deemed status" for those providers who are accredited by nationally recognized bodies who review and certify providers of psychiatric residential treatment services for children. When applying for licensure or licensure renewal, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a facility accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; July 1, 2022; April 1, 2024.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-07, 25-03.2-08, 25-03.2-09

CHAPTER 75-03-18

75-03-18-02. Who may file an appeal.

1. The subject of an assessment of suspected child abuse or neglect who is aggrieved by the result of the assessment or child protection tier designation may file an appeal.
2. A staff member of child protection services ~~will~~shall notify the subject in writing of the decision resulting from an assessment, including the child protection tier designation. The staff member of child protection services who notifies the subject of the decision resulting from the assessment shall complete an affidavit of mailing that becomes a part of the assessment record in the form and manner prescribed by the department.
3. Written appeal procedures are available from the department upon request.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; September 1, 1997; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5

75-03-18-04. Time for filing request for appeal.

An appeal may not be filed before the date of an assessment decision or child protection tier designation and must be received by the department within thirty days after the documented date of the subject notification of the decision in accordance with procedures in chapter 75-01-03. Notification is considered to have occurred three days after the date on the affidavit of mailing. A postmark date is not accepted as the received date.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; September 1, 1997; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5

75-03-18-13. Effect of reversal of case decision or appeal.

If an assessment decision is reversed on appeal under this chapter or under North Dakota Century Code chapter 28-32, a notation of the fact that the finding was reversed must be added to the record and the department may not place the subject on the child abuse information index.

History: Effective November 1, 1994; amended effective January 1, 1996; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5

CHAPTER 75-03-19
ASSESSMENT OF CHILD ABUSE AND NEGLECT REPORTS

Section

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75-03-19-03	Time for Initiating Assessments - Emergencies
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75-03-19-05	Time for Submitting Written Assessment Reports [Repealed]
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75-03-19-09	Child Abuse or Neglect Complaint or Allegation
75-03-19-10	Training Requirements
<u>75-03-19-11</u>	<u>Child Abuse Information Index</u>

75-03-19-11. Child abuse information index.

1. The child abuse information index is comprised of three child protection tiers. The highest child protection tier is comprised of the most severe form of maltreatment with the lowest tier consisting of the least severe form of maltreatment. The department shall assign each subject with a confirmed or confirmed with unknown subject determination a child protection tier in correlation with the maltreatment determination.

a. Child protection tier 1. Subjects determined to have abused or neglected a child for any of the following maltreatment determinations shall remain on the child abuse information index for a period of twenty-five years:

(1) Physical abuse resulting in death of a child;

(2) Neglect resulting in death of a child;

(3) Sexual abuse;

(4) Physical abuse or neglect resulting in near death of a child;

(5) Physical abuse or neglect resulting in bodily injury that created a substantial risk of death, or caused serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs; or

(6) Physical abuse or neglect resulting in substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

b. Child protection tier 2. Subjects determined to have abused or neglected a child for any of the following maltreatment determinations shall remain on the child abuse information index for a period of seven years:

(1) Physical abuse or neglect resulting in any impairment of physical condition, including physical pain;

(2) Neglect impacting the child's physical, mental, or emotional health;

(3) Neglect resulting in environmental exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia as prohibited by North Dakota Century Code section 19-03.1-22.2; or

(4) Neglect resulting in prenatal exposure to alcohol misuse or any controlled substance in a manner not lawfully prescribed by a practitioner.

c. Child protection tier 3. Child protection tier 3 consists of all other confirmed reports of child abuse and neglect, excluding educational neglect, that do not meet child protection tier 1 or tier 2 criteria. Subjects determined to have abused or neglected a child for any remaining form of maltreatment shall remain on the child abuse information index for a period of three years.

2. If two or more forms of maltreatment are found to occur on a confirmed determination, the department shall place the subject on the child abuse information index for the highest applicable child protection tier.

3. The department shall remove the subject from the child abuse information index after the child protection term of years has expired for a confirmed or confirmed with an unknown determination in correlation with the maltreatment determination.

History: Effective April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5

**CHAPTER 75-03-36
LICENSING OF CHILD-PLACING AGENCIES**

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75-03-36-01. Definitions--Application.

1.--The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-12. In addition, as used in this chapter:

~~a.1.~~ "Adoption ~~disruption~~dissolution" means ~~an interruption~~a termination of parental rights of an adoption prior to adoptive parent after finalization in which the child is returned to foster care or placed with another family of the same adoption.

~~b.2.~~ "Adoption ~~services~~placement" ~~is a coordinated program of services for the child, the child's birth parents, and the adoptive applicants and adoptive parents~~means the formal date on which a child, who is legally free for adoption, is placed for the purpose of adoption.

~~c.3.~~ "~~Authorized agent~~Adoption placement disruption" means ~~the human service zone, unless another entity is designated by the department~~an interruption of an adoption after formal placement and prior to finalization in which the child is returned to foster care or placed with another family.

4. "Client" means a child, birth parent, foster care provider, adoptive parent, or adopted individual.

~~d.5.~~ "Department" means the North Dakota department of health and human services.

~~e.6.~~ "~~Family foster home~~Foster care provider" means an ~~occupied private residence in which~~individual living in a private dwelling who maintains a license, certification, or approval from the department to provide family foster care ~~for~~to children ~~is regularly provided by the owner or lessee of the home to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply. For the purposes of this subsection, foster care for children applies to those agencies placing children that are in the custody of a human service zone, a tribe, or the state in family foster homes~~in need of temporary safety services when placed out of the home.

~~f.~~ "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family.

~~g.7.~~ "Legal risk adoptive placement" means placement of a child with a prospective adoptive family when the child is not legally free for adoption.

~~h.8.~~ "Life book" means a tool used with children in out-of-home care and children who have been adopted to record memories and life events ~~as they move to different placements.~~

9. "Nonemployee" means an individual who is not compensated by the child-placing agency, such as a volunteer or student intern providing specific services under the supervision of an employee.

~~i.10.~~ "Permanent adoption record" means all paper, or electronic records, and identifying and nonidentifying information related to an adopted individual, birth siblings, birth parents, or adoptive parents which pertains to an adoption.

~~j.11.~~ "Resident child-placing agency" means a child-placing agency that maintains an office within this state.

~~2.~~ ~~In these rules, the requirements for licensure for a child-placing agency apply to a new application for licensure as well as to an application for relicensure unless the context otherwise specifically implies:~~

History: Effective April 1, 2010; amended effective April 1, 2016; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-06-01.4, 50-11-03, 50-12-05

Law Implemented: NDCC ~~50-12~~50-06-01.4, 50-11-00.1, 50-12-02

75-03-36-02. ~~Child-placing agency~~Application for license.

1. ~~Application for a child-placing agency license must be made on an application form provided by~~An applicant's application may not be approved for a license to operate a child-placing agency until the department has reviewed the need for the additional child-placing agencies. To enable the department to make a determination of need for a new child-placing agency, the applicant shall submit an initial application, including the following documentation and information, to the department:
 - a. A detailed plan for the operation of the proposed child-placing agency which includes:
 - (1) The purpose of the child-placing agency;
 - (2) The number, gender, and age range of the children to be served;
 - (3) A description of specific programs offered by the prospective child-placing agency;
 - (4) A written placement policy, forms, and a description of the legal procedures which will be used to obtain the authority to place the child;
 - (5) A written statement of the fees that will be charged for each service;
 - (6) The geographic area the prospective child-placing agency will serve; and
 - (7) A proposed budget.
 - b. A detailed written description and findings that document the reasons why the unserved children under subsection a may not be served in another child-placing agency.
 - c. Data to support that existing child-placing agencies' placement resources are not adequate to meet the needs of North Dakota children.
2. ~~At the~~Upon receipt of an initial application, the ~~applicant~~department shall ~~submit a written purpose and policy statement for the general operation and management of the child-placing agency. The statement must include:~~
 - a. ~~The purpose of the child-placing agency, the geographic area the agency expects to serve, the ages of children to be placed, and any other specific factors regarding the children to be placed or the homes in which the children will be placed~~Review the applicant's information and may ask for additional materials or information necessary for evaluation of need purposes;
 - b. ~~A written placement policy, including parental agreement forms, and a description of the legal procedures which will be used to obtain the authority to place the child~~Respond in writing within ninety days of receipt of all required information from the applicant; and
 - c. ~~A written statement of the fees that will be charged for each service~~Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is no need for additional child-placing agencies, the department may deny the initial application. If the department determines there is need for an additional licensed child-placing agency, the notice must be accompanied by an authorization for the applicant to move forward with the application process for a license.

3. An application for a child-placing agency license must be submitted in the form and manner prescribed by the department, which will initiate a document-based review or onsite visit at least every two years.
4. For purposes of initial licensure, the child-placing agency shall demonstrate it has sufficient predictable income to operate its program of services and, upon relicensure, shall demonstrate ongoing financial stability.
5. Upon receipt of the application ~~for license or renewal of license~~, the department shall conduct a licensing study ~~or a license review~~ to determine if the applicant meets all applicable requirements for licensure.
- 4-6. After completion of a licensing study, the department shall issue a license to any applicant that meets all requirements for licensure.
- 5-7. The department shall renew the license on the expiration date of the previous year's license if:
 - a. The licensed child-placing agency makes written application for renewal prior to the expiration date of its current license;
 - b. The licensed child-placing agency continues to meet all requirements for licensure at the time of the relicensing study; and
 - c. The licensed child-placing agency submits a copy of its yearly budget ~~and annual audit~~ of expenditures.
- 6-8. If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.
- ~~7. The licensure requirements of this chapter do not apply to human service zones nor does this chapter apply to child-placing activities undertaken by human service zones.~~

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-02

75-03-36-03. License denial or revocation ~~and denial~~.

1. ~~After written notice to the applicant or licensee, the department may deny or revoke a~~ A child-placing agency license upon finding that: may be denied or revoked under the terms and conditions of North Dakota Century Code chapter 50-12 or by failing to meet the minimum requirements of this chapter.
2. If the department decides to deny or revoke a license, the department shall notify the child-placing agency in writing of its decision and the reasons for denial or revocation, including:
 - a. The applicant or the licensee is not in compliance with all licensure requirements; or
 - b. The applicant or the licensee has made a material misrepresentation to the department regarding its operations ~~or facility; or~~
 - ~~c. The applicant, licensee, or a member of the applicant's or licensee's staff has been named as the subject in a child abuse or neglect confirmed decision; has been convicted of a crime that the department has determined as having a direct bearing on the applicant's, licensee's, or staff member's ability to serve the public; or has been convicted of another offense and has not been determined rehabilitated.~~

- ~~2-3.~~ If an action to revoke a license is appealed, the licensee may continue the operation of the ~~facility~~child-placing agency pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code section 50-12-11.

History: Effective April 1, 2010; amended effective April 1, 2022; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-12-10, 50-12-11, 50-12-12

75-03-36-04. Suspension ~~review~~or correction.

1. AThe department may require immediate suspension of a child-placing agency license.

- a. A child-placing agency may submit a written request for review to the department if its license is suspended. The written request must include a statement of the disputed facts and the name, address, and telephone number of the ~~person~~individual to be contacted regarding the review.-
- b. The request for review must be received by the department within five working days after the child-placing agency receives written notice of the suspension. The child-placing agency may submit supporting documents or affidavits for the department to consider during its review.-
- c. The department shall complete its review of the files, records, and other information received from the child-placing agency and issue its decision within thirty days after the department receives the child-placing agency's request for review. ~~The child-placing agency may submit supporting documents or affidavits for the department to consider during its review. The department shall prepare a written decision upon the files, records, and other information received from the child-placing agency which was considered during its review.-~~
- d. The department's decision constitutes the final determination of the suspension. If the department concludes that the child-placing agency made a false or misleading report to the department, the department will issue a notice of revocation of the child-placing agency's license.

2. The department may require immediate correction of a violation of North Dakota Century Code chapter 50-11 or this chapter. The child-placing agency has twenty days to correct any violations. All time periods under this section commence on the third day after the department mails notice of the correction order to the child-placing agency. Upon written request by the child-placing agency and upon showing need for an extension created by circumstances beyond the control of the child-placing agency and documentation that the child-placing agency has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

3. The department may inform the public of a child-placing agency correction order or suspension status.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-12-11

75-03-36-05. Resident child-placing agency office requirements.

A resident child-placing agency shall maintain a physical office within the state, including an in-state mailing address and an in-state telephone number. The resident child-placing agency must ensure that ~~the telephone is answered during regular business hours, or has messaging capabilities~~at minimum the

child placement coordinator maintains an onsite in-state presence, unless otherwise approved by the department.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-02.1

75-03-36-06. Governance and responsibilities.

1. ~~The governing body of the~~Each child-placing agency shall have a governing body responsible for the overall operations, policies, activities, and practice of the child-placing agency. The governing body shall:
 - a. ~~Be responsible for establishing policies, determining programs, and guiding~~Define a mission statement.
 - b. Define services provided by the child-placing agency and clearly state which services are provided directly by the child-placing agency and which services are provided in collaboration with a referral source or other appropriate agencies.
 - c. Define the volume of clients, including children placed, birth parents, foster care providers, or prospective adoptive parents the child-placing agency serves each year. A child-placing agency shall serve no fewer than twenty-five clients per year and place no fewer than five children per year, unless the child-placing agency was licensed prior to April 1, 2024, and otherwise approved by the department.
 - d. Approve developed policies for child-placing agency operations in compliance with law, administrative rule, and policy as defined by the department, inclusive of administration, program, personnel policy, and procedure to address nondiscrimination. Personnel policies must include recruitment and retention of employees to operate the child-placing agency and expectations of employees and nonemployees, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every five years.
 - e. Guide the child-placing agency's development and ~~providing~~provide leadership.
 - b.f. Be composed of at least three members, none of whom are family members of employees of; a list of the names and contract information of members of the governing body must be maintained and submitted to the department during each licensing period. Each board member shall annually disclose conflicts of interest. Members of the board may not be family or have conflicts of interest with the child-placing agency administrator or employees with budget or accounting duties.
 - e.g. ~~Meet as often as necessary, but at least four times a year with a quorum of its members present at the meetings~~every six months.
 - h. Maintain records of the governing body's meetings.
 - d.i. Develop and review policies for board member selection criteria and rotation ~~of its members of the governing body.~~
 - e.j. Ensure that the child-placing agency is funded, housed, staffed, and equipped in a manner required for the provision of services.
 - f.k. Employ a qualified administrator and delegate responsibility to that administrator for the administration of the child-placing agency.

~~g.l.~~ ~~Regularly evaluate~~Evaluate the performance of the administrator at least annually.

~~h.m.~~ Approve the child-placing agency's annual budget of anticipated income and expenditures necessary to provide services described in the child-placing agency's statement of purpose.

~~i.n.~~ ~~Review a quarterly summary of revenues and expenditures as compared with the child-placing agency's approved annual budget.~~

~~j.~~ ~~Arrange for an annual financial audit to be prepared by a certified public accountant or a licensed public accountant and submitted to the department with the child-placing agency's request for relicensure~~Provide the most recent fiscal year-end financial records to the department, upon request.

~~k.~~ ~~Establish personnel policies for the selection and retention of staff necessary to operate the child-placing agency.~~

~~l.o.~~ ~~Ensure that the child-placing agency has written policies and practices conducive to recruitment, retention, training, staff development, effective performance by qualified personnel, job descriptions for each position, and review of personnel policies and practices with staff participation at least every five years~~prepares an annual budget based on the assessment of child-placing agency program priorities and a realistic appraisal of anticipated funding, including reimbursement for services.

~~p.~~ Ensure the child-placing agency submits a copy of its budget to the department with a cost breakdown of budget items utilized to determine fees for services.

~~q.~~ If the child-placing agency increases fees for adoption services, ensure the child-placing agency submits justification of the cost increase to the department before charging an increased rate.

~~m.r.~~ ~~Request formal~~Receive an initial orientation from the administrator ~~on behalf of~~to inform new board members of the child-placing agency's goals, programs, and methods of operation.

~~n.s.~~ ~~Maintain attendance records and minutes of the governing body's meetings~~Ensure the child-placing agency employs or retains legal representation to represent the child-placing agency in legal matters and to ensure prompt resolution of legal questions for children in the legal custody of the child-placing agency.

2. ~~Each~~The child-placing agency shall ~~provide the department with the names and addresses of the members of the governing body within thirty days after the members' selection~~have sufficient liability insurance to protect itself, employees, and children entrusted to its care from serious financial jeopardy.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-02

75-03-36-07. Responsibilities of the child-placing agency administratorAdministrator.

1. The governing body of the child-placing agency shall designate an administrator and shall clearly define, in writing, the responsibilities of the administrator.

2. The administrator shall:

- a. Plan and coordinate with the governing body ~~the development~~approval of new policies and procedures governing the child-placing agency's services related to personnel, program, and administrative operations and shall maintain the policies and procedures required by this chapter.
- b. Ensure that the governing body is kept informed of matters affecting the child-placing agency's finances, operation, and provision of services.
- c. Ensure employment of qualified ~~staff and the administration of the child-placing agency's personnel policies~~employees.
- d. Ensure that the child-placing agency and its services are made known to the community.
- e. ~~Maintain the policies and procedures required by this chapter in written form.~~
- ~~f.~~ Maintain a current organizational chart showing the child-placing agency's lines of accountability and authority.
- ~~g.~~f. Maintain a records retention policy that ensures adoption files are maintained permanently and adoption files which do not result in an adoption, adoption search files, and foster care files are retained according to ~~applicable foster care regulations~~child-placing agency retention schedule.

~~2.3.~~ The child-placing agency, under the administrator's direction, shall maintain a record for each client. ~~A~~The client's record must be kept current from the point of intake to termination of service and must contain information relevant to the provision of services.

~~3.4.~~ The child-placing agency administrator ~~who delegates responsibility for program development shall delegate those responsibilities to qualified staff members~~shall ensure adequate supervision is provided to all employees and nonemployees working at the child-placing agency.

History: Effective April 1, 2010; amended effective January 1, 2012; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-02

75-03-36-08. Financial structure.

Repealed effective April 1, 2024.

- ~~1.~~ For purposes of initial licensure, the child-placing agency shall demonstrate that it has sufficient predictable income to operate its program of services and, upon relicensure, shall demonstrate ongoing financial stability.
- ~~2.~~ The child-placing agency shall prepare an annual budget based on the assessment of agency program priorities and a realistic appraisal of anticipated funding, including reimbursement for services. The child-placing agency shall submit a copy of its budget to the department with a cost breakdown of budget items utilized to determine fees for services.
- ~~3.~~ If the child-placing agency increases fees for adoption services, the agency shall submit a copy of the cost analysis to the department to justify the increase.
- ~~4.~~ The child-placing agency shall maintain a bonding program as protection for its governing body, staff, clients, funds, and property. The child-placing agency shall review the insurance program annually to assure adequate agency coverage.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-09. Personnel files.

1. The child-placing agency shall ~~have a personnel~~ maintain an individual file for each employee that includes the following. The file must include:

~~1. a. Inventory detailing first and last date of employment, reason employment ended, training totals per year, and performance evaluation dates.~~

b. The application for employment, including ~~history~~ a record of previous employment.

~~2. c. Reference letters, telephone notes, or both from former employers and personal~~ Documentation of information obtained from an employee's references, if applicable.

~~3. d. Applicable professional credentials and certifications~~ Verification of any required license or qualification necessary for the position assigned to the employee.

e. A job description specifying the employee's role and responsibilities.

f. A statement signed by the employee acknowledging the confidentiality policy.

~~4. g. Annual performance evaluations.~~

~~5. h. Orientation and training records.~~

~~6. Record of salary and salary adjustments.~~

~~7. Employee's first and last dates of employment.~~

~~8. i. Reason employment ended~~ Evidence of the employee having read and received a copy of the law and child-placing agency procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter.

~~9. j. Copies~~ Results of a fingerprint-based criminal history record ~~investigation results~~ check and child abuse and neglect ~~index findings~~ record.

2. The child-placing agency shall maintain an individual file for each nonemployee. The file must include:

a. Personal identification information.

b. Results of fingerprint-based criminal background checks and child abuse or neglect record.

c. Description of duties.

d. Orientation and training records.

e. Evidence of the nonemployee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon placement and annually thereafter.

f. A statement signed by the nonemployee acknowledging the confidentiality policy.

3. The child-placing agency shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-11-05, 50-12-03, 50-12-05

75-03-36-10. ~~Staff~~Employee functions and qualifications.

~~1. The child-placing agency shall employ or contract with staff with sufficient qualifications to enable them to perform the agency's fiscal, clerical, and maintenance functions.~~

~~2.~~ The child-placing agency shall employ or contract with staffservice providers to perform ~~the agency's administrative, supervisory, and placement services~~necessary child-placing agency functions. ~~These staff~~Required employees and their qualifications, ~~unless otherwise approved by the department,~~ are as follows include:

a. Administrator. The administrator shall provide for the general management and administration of the child-placing agency in accordance with the licensing requirements and policies of the child-placing agency's governing body. The administrator must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have a minimum of four years of related professional experience ~~in human services, at least two of which have been in administration including financial management, or must be an individual otherwise qualified and serving the child-placing agency as an administrator prior to April 1, 2010.~~

b. Supervisor. The ~~placement~~ supervisor shall supervise, evaluate, and monitor the work progress of the placement ~~staff~~employee. The ~~placement~~ supervisor must ~~be a licensed certified social worker~~have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice and have a minimum of two years of experience ~~in supervision of child placement workers or in child placement,~~ or must have a master's degree in a ~~human service-related~~behavioral science field ~~from an accredited school, and a minimum of two years of experience in supervision of child placement workers or in child placement, or must be an individual otherwise qualified and serving the child-placing agency as a placement supervisor prior to April 1, 2010.~~ The supervisor must be licensed as required by the field of practice.

c. Child placement coordinator. The child placement ~~worker~~coordinator shall perform intake services; provide ~~casework or group work services, or both,~~case management for children and families; recruit and assess foster and adoptive homes; and plan and coordinate resources affecting for children and families. The child placement ~~worker~~coordinator must behave a bachelor's degree in a behavioral science field and must be licensed ~~certified social worker or a licensed social worker~~as required by the field of practice.

~~3-2.~~ If the child-placing agency has no more than five child placement ~~supervisor~~coordinators employed, the ~~child placement worker must meet the education and experience requirements of the placement~~child-placing agency shall employ a supervisor and may not contract with a supervisor.

~~4.~~ ~~Staff serving as child placement workers or child placement supervisors must meet the above-stated education and experience requirements or be excused from those requirements found in North Dakota Century Code chapter 43-41 on the licensing of social workers.~~

~~5-3.~~ ~~Placement worker~~The child-placing agency shall establish a caseload standard. The child placement coordinator caseload must ~~be limited to~~ ensure the placement ~~worker~~coordinator is able to make all the required contacts with the child, biological parent, foster care provider, and adoptive families; ~~adopted adults~~adoption search clients; and collateral parties.

History: Effective April 1, 2010; amended effective January 1, 2012; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-03

75-03-36-11. ~~Staff~~Employee professional development.

1. The child-placing agency shall ensure that the ~~placement~~ supervisor and child placement ~~workers~~coordinator receive at least ten hours of training, as applicable to their position, in current foster and adoptive placement practices during each full year of employment per year with evidence of completion in the employee file. Activities related to orientation and supervision of the ~~staff members~~employees and routine tasks are not training activities for the purpose of this requirement.

2. Prior to a new employee working independently, the child-placing agency shall provide orientation training to the employee covering all of the following areas, with evidence of completion present in the employee file:

a. Child-placing agency philosophy and program goals;

b. Administrative procedures, policies, and protocols;

c. Personnel policies;

d. Expected employee conduct with coworkers and clients;

e. Protocol for identifying and reporting child abuse and neglect; and

f. Disaster plan.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-03, 50-12-05

75-03-36-12. Employee background checks.

Repealed effective April 1, 2024.

~~1. Criminal history record investigations and child abuse and neglect index investigations must be completed for all child-placing agency employees who have direct contact with clients. The investigations must be completed prior to an employee's unsupervised contact with clients.~~

~~2. Criminal history record investigations must be a fingerprint-based check completed against a national database.~~

~~3. Child abuse and neglect index investigations must be obtained from each state where the applicant has resided in the past five years. After the initial investigation, a child abuse and neglect index investigation must be repeated annually in this state and in the employee's state of residence for continued employment.~~

~~4. A subsequent criminal history record investigation is not required for an employee who maintains continuous employment at the child-placing agency unless the child-placing agency or the department determines that a need exists to conduct a subsequent investigation.~~

~~5. If an employee changes employment from one licensed child-placing agency to another licensed child-placing agency within a year of the completion of a criminal history record investigation and provides documentation of the individual's background check clearance, a new criminal history record investigation will not be required.~~

History: Effective April 1, 2010; amended effective April 1, 2016.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-13. Criminal Background checks and criminal conviction - Effect on licensure.

1. The department requires an initial fingerprint-based criminal background check for each child-placing agency owner, employee, or nonemployee with direct contact with clients. An initial fingerprint-based criminal background check is also required for each prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home. Subsequent fingerprint-based background checks are not required for an employee, nonemployee, prospective adoptive parent, foster care provider, or any adult household member who maintains continuous employment, licensure, or affiliation with the child-placing agency unless the child-placing agency or the department determines a need exists to conduct a subsequent investigation.
2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based criminal background check. An annual child abuse and neglect index check must be completed and placed in the personnel file for each employee and nonemployee or in the client file for each prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home.
3. A prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home may not be licensed, certified, or approved ~~for the adoption of a child~~, or a child-placing agency owner, employee, or nonemployee may not be known to have, ~~and a child-placing agency may not employ an individual who is known to have~~ been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; ~~or~~ 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter, or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if a class A or B felony under section 2 of that section; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of ~~a~~ child or 14-09-22.1, neglect of ~~a~~ child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, ~~without a subsequent charge or conviction~~, for all other criminal convictions has elapsed.

- (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

~~2.4.~~ The department has determined that the offenses enumerated in subdivisions a and b of subsection ~~4.3~~ have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement, a foster care provider, and as an owner ~~or~~ employee, or nonemployee of a child-placing agency.

~~3.5.~~ In the case of ~~a misdemeanor simple assault~~ offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction~~ for all other criminal convictions. The department may not be compelled to make such determination.

~~4.6.~~ The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

~~5.~~ ~~The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.~~

~~6.7.~~ An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

- a. Common knowledge in the community;
- b. Acknowledged by the individual; or
- c. Discovered by the child-placing agency, authorized agent, or department as a result of a background check.

~~8.~~ The department may request a fingerprint-based criminal background check whenever an owner, employee, or nonemployee of the child-placing agency, a prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home is known to have been involved in, charged with, or convicted of an offense.

~~9.~~ The department shall review fingerprint-based criminal background check results as follows:

- a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

- b. The department shall assign the individual's request for review to a department review panel.
- c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
- e. The final decision of the review panel may not be appealed.

10. The child-placing agency shall make an offer of employment to an employee or an offer of placement to a nonemployee conditioned upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the child-placing agency may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee may have only supervised interaction with clients.

11. The department may excuse an owner, employee, or nonemployee of a child-placing agency, prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an owner, employee, or nonemployee of a child-placing agency, prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the individual lived during the eleven years preceding the signed authorization for the background check.

~~7-12~~ A child-placing agency shall establish written policies and engage in practices that conform to those policies to effectively implement this section, and North Dakota Century Code sections 50-11.3-02 and 50-12-03.2.

~~8-13~~ A child-placing agency shall establish written policies specific to how the child-placing agency will proceed if a current employee or ~~volunteer~~nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective April 1, 2010; amended effective April 1, 2016; July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11-03, 50-11.3-01, 50-12-05

Law Implemented: NDCC ~~50-12, 50-11.3~~50-11-06.8, 50-11.3-01, 50-12-03.2

75-03-36-14. ~~Volunteers~~Nonemployees.

1. A child-placing agency ~~which~~that utilizes ~~volunteers~~nonemployees who work directly with children and families on a regular basis shall:
 - a. Develop ~~and provide a~~ description of duties and ~~specify~~specified responsibilities ~~for volunteer positions;~~
 - b. Require personal references, if applicable;
 - c. Designate ~~a staff member~~an employee to supervise and evaluate ~~volunteers~~nonemployees;

- d. Develop a plan for orientation and training of nonemployees which includes education on the legal requirements for confidentiality, training in the philosophy of the child-placing agency, and the needs of children and families served by the child-placing agency;
 - e. Maintain documentation that the nonemployee has read and received a copy of the law and child-placing agency procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially and annually thereafter;
 - f. Require that a volunteer sign a statement of confidentiality; and
 - f.g. Require each volunteer nonemployee to successfully complete a fingerprint-based criminal history record investigation background check and a child abuse and neglect index investigation check prior to allowing the volunteer nonemployee to have unsupervised contact with children.
2. Volunteers Nonemployees may not be used in the place of full-time paid staff employees.

History: Effective April 1, 2010; amended effective April 1, 2016; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-11-05, 50-12-03, 50-12-05

75-03-36-15. Student field placements.

Repealed effective April 1, 2024.

- ~~1. A child-placing agency that accepts students for field placements shall:

 - ~~a. Develop a written plan describing the students' tasks and functions;~~
 - ~~b. Require references from the students' placing institutions;~~
 - ~~c. Designate a staff member to supervise and evaluate the students;~~
 - ~~d. Develop a plan for orientation and training of students in the philosophy of the child-placing agency and the needs of children and families served by the child-placing agency;~~
 - ~~e. Provide for students to participate in developing and carrying out the case plans for children and families with whom they are working directly;~~
 - ~~f. Require that students sign a statement of confidentiality; and~~
 - ~~g. Require successful completion of criminal history record investigations and child abuse and neglect index investigations prior to allowing students to have unsupervised contact with children.~~~~
- ~~2. Students may not be used in the place of full-time paid staff.~~

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-16. Child abuse and neglect reporting.

- 1. The child-placing agency shall follow the mandated procedures for reporting child abuse and neglect as outlined in North Dakota Century Code section 50-25.1-03. Upon hire and annually thereafter, all employees and nonemployees shall certify having read the law requiring the

reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the child-placing agency's written child abuse and neglect procedures. All employees and nonemployees are required to report suspected child abuse and neglect.

2. The child-placing agency shall develop policy for handling any suspected incidents of child abuse or neglect involving a child-placing agency staff or employee, nonemployee, foster care provider, prospective foster care provider, adult household member, or prospective adoptive parents~~parent~~. These procedures must include:
 - a. A provision that ~~assures that~~ensures any ~~person~~individual having knowledge of or reasonable cause to suspect that a child is abused or neglected reports the circumstances ~~to the local human service zone or the department~~to child protection intake;
 - b. A provision for preventing a recurrence of the alleged incident pending ~~investigation~~an assessment; and
 - c. ~~A provision for rehabilitation of the individual and for evaluating the continued utilization of any~~Approval from the department indicating the individual is determined rehabilitated if the child-placing agency ~~staff member or~~employee, nonemployee, foster care provider, adult household member, or prospective adoptive parent ~~who~~ has been the subject of a confirmed decision in a report of child abuse or neglect ~~or has been convicted of a direct bearing offense~~.

History: Effective April 1, 2010; amended effective April 1, 2022; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-03, 50-12-05, 50-25.1-03

75-03-36-16.1. Adoptive family child abuse and neglect.

Repealed effective April 1, 2024.

~~—A child-placing agency shall not place a child in an adoptive home if a person residing in the adoptive home, except a child placed for adoption, has been the subject of a child abuse or neglect assessment where a confirmed decision was made unless the agency director or supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the adoptive parents, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the adoptive assessment; and~~

- ~~—1. The adoptive home's resident can demonstrate the successful completion of an appropriate therapy; or~~
- ~~—2. The adoptive home's resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.~~

~~**History:** Effective January 1, 2012; amended effective April 1, 2022.~~

~~**General Authority:** NDCC 50-12-05~~

~~**Law Implemented:** NDCC 50-12~~

75-03-36-17. Critical incident Incident and sentinel event reporting.

The child-placing agency shall have written policy outlining the ~~critical incident recording and reporting process to the department, and parent or custodian of the child, if any, when any of the following occurs~~documentation and reporting of incidents and sentinel events that occur while a child is in a foster care or adoption placement prior to the adoption finalization. The policy must include:

1. ~~An~~A description of an incident requires the services of involving harassment, violence, discrimination, or an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, child in placement, foster care provider, prospective adoptive parents, or child-placing agency employee or nonemployee.
2. A description of an incident involving law enforcement, including in the case of a runaway-~~or an absent child~~; criminal activity, behavior resulting in harm to others, or restraint injury.
- 2.3. A description of a sentinel event as an unexpected occurrence involving death, serious injury or trauma of a child in foster care, including a child placed for adoption, that requires the services of a medical practitioner; psychological injury not related to the natural causes of a client's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome. Sentinel events include serious injury or trauma to a client, attempted suicide by the client, death of a client, or inappropriate sexual contact.
4. A requirement that notification must be made to custodian, parent, or guardian and the department immediately or within one business day.

- ~~3. Damage to a foster parent's home which could affect compliance with licensing standards, including damage caused by fire, natural disaster, or other incident, which would cause any kind of major structural damage affecting the safety or shelter of the child or children in foster care;~~
- ~~4. Extended failures that are not repairable within a twenty-four-hour period, including heating, electrical, plumbing, or safety warning in the foster home or the home in which the child is placed for adoption;~~
- ~~5. The death of a child placed in a home by the child-placing agency;~~
- ~~6. Any attempt at suicide by a child placed in a foster home, including a child placed for adoption, by the licensed child-placing agency;~~
- ~~7. Pregnancy of a child placed in a foster home, including a child placed for adoption;~~
- ~~8. Criminal activity by the foster or adoptive parent;~~
- ~~9. An assault on a staff person or family foster home member by a foster child that requires medical attention by a medical practitioner;~~
- ~~10. Outbreak of a serious communicable disease;~~
- ~~11. Any condition requiring closure of the child-placing agency or family foster home; and~~
- ~~12. Any behavior involving a foster child, including a child placed for adoption, that results in a serious threatening situation of harm to the family members, staff, or other foster children.~~

History: Effective April 1, 2010; amended effective July 1, 2020; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-07

75-03-36-18. Emergency Disaster plan.

The child-placing agency shall ~~establish~~have a written ~~emergency~~disaster plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather, loss of water or food supplies, intruder, and lost child clients or staff to accommodate emergencies. The disaster plan must ~~include~~specify:

1. ~~Designation of crisis intervention leader~~Employee roles and responsibilities;
2. ~~Development of a crisis response organizational chart~~Processes to ensure ongoing communication is maintained with children in placement, foster care providers, or prospective adoptive parents and employees;
3. Primary and alternate plans for evacuation to ensure continuity of services, including ~~transportation and relocation of participants, when necessary, and evacuation of injured persons~~workspace and ongoing access to relevant child-placing agency files; and
4. Supervision of ~~participants~~employees, nonemployees, children in placement, foster care providers, and prospective adoptive parents after evacuation or relocation.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-07

75-03-36-19. Confidentiality and retention of files.

1. The child-placing agency shall have written procedures for safeguarding the confidentiality of records.
2. Except as otherwise provided in this section and North Dakota Century Code section 14-15-16, child-placing agency records concerning children and families who have received, are receiving, or seek to receive services must be safeguarded and may be made available only:
 - a. To employees and nonemployees of the child-placing agency, to the extent reasonably necessary for the performance of their duties;
 - b. To persons authorized by a custodian, parent, or guardian who may lawfully review a child's record;
 - c. In a judicial proceeding;
 - d. To officers of the law or board specific to a criminal investigation; and
 - e. As required by law.
3. The child-placing agency shall ensure that all records are kept in a safe place, protected from damage, theft, and unauthorized access.
- ~~3.4.~~ The child-placing agency shall ~~have written policies regarding retention of permanent adoption records, foster care records, and personnel files~~disclose its records to the department, upon request.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC ~~50-12~~14-15-16, 50-11-05, 50-12-05

75-03-36-20. Legal services and responsibilities.

Repealed effective April 1, 2024.

~~The child-placing agency shall employ or retain legal staff to represent the child-placing agency in legal matters and to assure prompt resolution of legal questions for children in the legal custody of the agency. The agency shall have sufficient liability insurance to protect itself and children entrusted to its care from serious financial jeopardy.~~

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-21. Quality assurance.

~~The~~ A child-placing agency ~~or applicant~~ shall ~~develop written policy outlining its process for determining that the child-placing agency is~~ have a performance and providing quality programming and services, including the following improvement plan that ensures licensing compliance, advances service delivery, reviews management practices, and measures the achievement of program goals and outcomes. Quality assurance must include:

1. A process for reviewing the case plans for each child to evaluate the continued appropriateness ~~of each service plan;~~
2. A process for reviewing select child, foster or adoptive families, and personnel files, ~~on a regular basis, quarterly~~ to ~~determine the~~ ensure quality ~~and effectiveness~~ of services being provided; and
3. A process for reviewing the child-placing agency's ~~referral and admissions~~ policies, procedures, and practices.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-05

75-03-36-22. Child-placing agency closure.

~~Unless otherwise approved by the department, a~~ The child-placing agency ~~licensed under this chapter may not cease operations before~~ shall have a policy and procedure in the event a child-placing agency closes. Prior to closing, the administrator shall provide at least a sixty-day written notice to the department, including:

1. ~~Notifying the department in writing of the child-placing agency's intent to close and the proposed date~~ A detailed plan for closure, specifying:
 - a. ~~Date~~ Date of closure, ~~with details regarding how the child-placing agency plans to meet the requirements of this subsection. This notification must be received by the department not less than ninety days prior to the proposed date of closure; and~~
 - b. Plan to notify each custodian, parent or guardian, foster care provider, adoptive family, and employee, no less than forty-five days prior to closure.
2. ~~All pending~~ A detailed plan to supervise and manage all adoptive placements ~~are finalized;~~
3. ~~All~~ A detailed plan to accommodate all licensed or approved families ~~awaiting adoptive placement have been referred and birth families~~ to other agencies ~~or have closed their regarding closure of cases;~~
4. ~~Custodians of children referred for services have been informed of the child-placing agency's closure and arrangements for transfer of the cases have been made;~~
5. ~~The child-placing agency makes a~~ A detailed plan of reasonable attempt, which may require ~~publication of a notice of closure,~~ attempts to notify former clients of the child-placing agency's closure;

~~6-5.~~ ~~Arrangements have been~~ A detailed plan of any arrangements made with another ~~resident~~ licensed child-placing agency to retain all permanent adoption records and provide post-finalization services; and

~~7-6.~~ Arrangements ~~have been made~~ to transfer any other records which must be retained for a specific time period to the department; ~~and~~

~~8.~~ ~~Temporarily retained records must be:~~

~~a.~~ ~~Boxed in banker-style boxes;~~

~~b.~~ ~~Clearly labeled; and~~

~~c.~~ ~~Indexed with the child-placing agency providing the index to the department in writing and electronically as specified by the department.~~

History: Effective April 1, 2010; amended effective January 1, 2012; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-12-07

75-03-36-23. Adoption ~~services~~ - ~~Coordination with referral~~ Referral source.

A child-placing agency shall work in conjunction with a referral source, which may include a birth parent or a public agency case manager. A child-placing agency may:

1. Distribute information regarding ~~its~~ adoption services ~~to referral sources and inquiring~~ provided for a child, the child's birth ~~parent,~~ and prospective adoptive ~~families~~ parents;

2. ~~Request complete pertinent~~ Provide a list of required information needed from a referral source, ~~including the following:-~~

~~a.~~ ~~Medical and developmental information on the child;~~

~~b.~~ ~~Birth parent medical and social history, including the birth parent's medical and social history;-~~

~~c.~~ ~~Discharge hospital report and updated medical information on the child after the birth of the child;~~

~~d.~~ ~~The child's life book;~~

~~e.~~ ~~Child protection and child welfare history information, if applicable;~~

~~f.~~ ~~Information from foster parents on the child prior to adoptive placement, if applicable;~~

~~g.~~ ~~Information regarding the child's religious affiliation, if available;-~~

~~h.~~ ~~A certified copy of the termination of parental rights order prior to adoptive placement; and~~

~~i.~~ ~~A copy of the child's birth certificate and social security card, if available.;~~

3. ~~Attend the child and family team~~ Request an invite to meetings of any regarding the child referred who is in the custody of a human service zone, ~~if applicable; and~~

4. Obtain necessary authorization for permission to recruit a prospective adoptive family for the child.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-05

75-03-36-24. ~~Provision of services to birth parents--Adoption~~ - Services to birth parents.

1. The child-placing agency shall:
 - a. Inform a birth parent of the birth parent's rights, obligations, and responsibilities under state law, or as specified by court order;
 - b. Inform a birth parent of the continuum of openness in adoption and the options available to the birth parent and the child for future contact as allowed by state law;
 - c. Assist the birth parent in making a decision and understanding the finality of relinquishment of parental rights;
 - d. Assist the birth parent to legally terminate the birth parent's parental rights provided this is the decision of the parent and the parent has the legal authority to ~~unilaterally~~ relinquish his or her rights or make an adoption plan;
 - e. ~~Honor~~Solicit the preference of the birth parent for the religious faith in which their child ~~will~~may be reared, ~~provided it does not unduly delay placement of the child for adoption;~~
 - f. Include the birth parent, and other significant ~~persons~~individuals including the child when appropriate, in the development of the case plan;
 - g. Obtain, if assuming custody of a child for voluntary placement purposes:
 - (1) Written authority from the parent or parents to place the child; and
 - (2) Written authority from the parent or parents to provide medical services for the child;
 - h. Make reasonable efforts to involve the birth ~~father~~parents in planning for the adoptive placement of the child. Reasonable efforts as identified by this section means effort with respect to any action made, attempted or taken by the child-placing agency is intended to be timely, documented, and consistent with the best interests of the child; and
 - i. Offer supportive and referral services to the birth parents.
2. No fee, with the exception of reasonable fees as verified by the court and allowed by state law, may be paid by the prospective adoptive parents to the birth parents. The fees paid by the prospective adoptive parents and the services provided by the child-placing agency to the birth parents ~~are~~may not ~~be provided~~ dependent on their willingness to relinquish their child for adoption. ~~3. The child-placing agency arranging the adoptive placement of a foreign-born child is not expected to provide services to the birth parents, but shall obtain available medical and other pertinent information regarding the adoptive child.~~

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-05

75-03-36-25. ~~Provision of services to the child--Adoption~~ - Services to the child.

1. The child-placing agency shall make every effort to place siblings together in an adoptive home. If it is not possible to place siblings together, the child-placing agency shall add written documentation in the child's file identifying the reasons the siblings could not be placed

together and the plans formulated to keep the siblings in contact with one another after the adoption.

2. The child-placing agency shall create and provide a life book to the child, ~~if the child does not already have one,~~ and shall give the child an opportunity to explore the child's birth history in preparation for the child's adoptive placement.
3. When appropriate to the child's developmental needs, the child-placing agency shall provide preplacement counseling to the child to assist the child in adjusting to adoption.
4. The child-placing agency shall begin recruitment efforts immediately upon and on an ongoing basis as directed by the referral for a child ~~referred to the child-placing agency~~ without an identified family. Diligent recruitment will may include listing the child with local, regional, and national ~~child-specific~~ recruitment resources ~~as directed by the child's child and family team.~~

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-1250-12-05~~

75-03-36-26. Private adoptions - Selection of ~~interim care for child pending~~ adoptive placement.

~~1. The child-placing agency designated by the child's custodian or by the court shall select the most appropriate form of care for the child consistent with the child's needs.~~ shall select prospective adoptive parents who have the capacity to assist in the achievement of the permanency goal. For all private adoptions, the

~~2. The child-placing agency shall select care that has the capacity to assist in the achievement of the goal of permanency and shall make efforts as appropriate:~~

1. Make efforts to involve the birth parents in the selection of ~~care~~ the prospective adoptive parents.

~~3.2. The child-placing agency may~~ if appropriate, make a legal risk adoptive placement, prior to the termination of parental rights, into the home of a prospective adoptive parent of that child, provided that:

- a. The prospective family home has been fully studied and recommended for adoption placement; and
- b. The prospective adoptive parents sign a document acknowledging that they understand the risk of the birth parent reclaiming the child and that the prospective adoptive parents will return the child to the child-placing agency upon the child-placing agency's request.

3. Recruit foster care providers to provide interim care for infants being relinquished to the custody of the child-placing agency prior to the adoptive home placement of the child, if applicable.

4. Collaborate with the department to identify a licensed foster care provider for the child-placing agency to access for interim care for infants. Permission must be limited to a specific child for a specific period of time. The child-placing agency shall provide the same information to the licensed foster care provider as it would provide to the child-placing agency's foster care provider.

History: Effective April 1, 2010; amended effective April 1, 2016; April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-1250-12-08~~

75-03-36-27. Licensed ~~child-placing~~child-placing agencies - Interim family foster homes for infants.

Repealed effective April 1, 2024.

- ~~1. The child-placing agency may recruit and arrange for licensing family foster homes that will provide interim care for infants being relinquished to the custody of the child-placing agency prior to the adoptive placement of the child. Foster homes must be licensed according to North Dakota Century Code chapter 50-11, North Dakota Administrative Code chapter 75-03-14, and department policy found in manual chapter 622-05.~~
- ~~2. The child-placing agency shall provide orientation to a foster parent to increase the foster parent's awareness of the following:
 - ~~a. The foster parents' roles and relationships with adoptable children, birth parents, and prospective adoptive parents;~~
 - ~~b. The estimated time frame for adoptive placement;~~
 - ~~c. The record of the child's development and needs;~~
 - ~~d. The child's life book information;~~
 - ~~e. The provision of pertinent, nonidentifying information regarding the child's background, case plan, and written authority from the custodian for medical care, including prescribed medication; and~~
 - ~~f. An explanation of reimbursement procedures for cost of care.~~~~
- ~~3. If the child-placing agency wishes to use a human service zone-supervised foster home, the child-placing agency shall secure permission to utilize the home from the appropriate human service zone director prior to the placement. Permission must be limited to a specific child for a specific period of time. The child-placing agency shall provide the same information regarding the child to the human service zone foster home as it would provide to the child-placing agency's foster home.~~

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-28. ~~Pre-adoption placement~~Adoption - Preplacement preparation services.

1. A child-placing agency may not place a child into an adoptive home without a full adoption assessment being completed on the prospective adoptive parents, including required fingerprint-based criminal ~~history record investigations~~background check and child abuse and neglect index ~~investigations~~check.
2. ~~If the age and circumstances of the child warrants, the~~The child-placing agency may not place a child into an adoptive home if:
 - a. There is a prior finding of deprivation related to any child in the prospective adoptive home within the last five years;
 - b. There has been a dissolution of a previous adoption within the last five years;
 - c. There has been a disruption of a formal adoptive placement within the last five years, unless further assessment by the child-placing agency in consultation with the department determines such placement to be in the best interest of the child; or

- d. The custodial agency reasonably believes the adoption is not in the best interest of the child.
3. Effective October 1, 2024, if the prospective adoptive parents are licensed foster care providers, the child-placing agency shall obtain and consider the foster care assessment as part of the adoption assessment to determine suitability. An adoptive home is presumed suitable if the foster care provider has:
- a. Been continuously licensed, certified, or approved as a family foster home for children; and
- b. Provided foster care for children for more than one year without a correction order, fiscal sanction, or license revocation proceeding.
4. A child-placing agency shall give the prospective adoptive parents an opportunity to review the records of the child in the child-placing agency's possession, and shall provide the prospective adoptive parents an opportunity to meet with the child's case manager, therapists, foster ~~parents~~care providers, and other treatment providers to gain an understanding of the child's needs and the services the child will require upon placement in the prospective adoptive home.
- ~~3-5.~~ If the age of the child allows, the A child-placing agency ~~worker~~ shall help the child, when age appropriate, understand the reasons for placement, ~~shall~~ prepare the child for the new family ~~and environment~~, and ~~shall~~ be available to the child, prospective adoptive parents, and the birth parents, when applicable, for supportive services.
- ~~4-6.~~ If the age or the mental, physical, or emotional condition of the child allows, A child-placing agency preplacement preparation services must include:
- a. A visit ~~between~~with the child at the home of the prospective adoptive parents ~~and the child in the foster home, if applicable~~;
- b. Sharing the child's life book with the child and the prospective adoptive parents, if applicable;
- c. ~~Making arrangements~~Arrangements for a physical examination unless the child had a physical examination within one year prior to placement ~~and~~. The child-placing agency shall provide the prospective adoptive parents with a copy of the physician's report and the child's immunization record ~~is in the child-placing agency's file for the child~~;
- d. ~~Making arrangements~~Arrangements for an eye, dental, and hearing examination for a child three years of age or older unless the child had these examinations within one year prior to placement ~~and~~. The child-placing agency shall provide the prospective adoptive parents with copies of the examination reports ~~are in the child-placing agency's file~~; and
- e. ~~The sharing~~Sharing of information regarding the child's development and needs between the ~~foster~~care providers, if applicable, parents and the prospective adoptive parents.
- ~~5-7.~~ The child-placing agency shall prepare the prospective adoptive parents for an understanding of separation anxiety, grief reaction, and problems related to attachment.
- ~~6-8.~~ The child-placing agency shall notify the referral source of the date of placement.
- ~~7-9.~~ The child-placing agency, if applicable, shall make ~~any interstate~~an adoptive placement in accordance with the interstate compact on the placement of children.

~~8-10~~ ~~If warranted, the~~The child-placing agency, ~~if applicable,~~ shall discuss the ~~availability of need and qualifications for~~ adoption assistance and shall make a referral to the ~~human service zone when appropriate~~department. The child-placing agency ~~must~~shall provide the ~~human service zone~~department with supporting documentation of the need for adoption assistance when making the referral.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~14-15-11, 50-12-08

75-03-36-29. Adoption ~~placement-~~ Placement.

1. The child-placing agency shall adopt written policies for the placement of a child legally free for adoption. The policies must ~~provide for the following~~detail:
 - a. ~~A placement~~Placement contract procedures as specified in North Dakota Century Code section 50-12-06;
 - b. Collaboration with the custodial case manager or birth parents to review the prospective adoptive parents;
 - c. Placement into an adoptive home as soon as possible after the child is legally free for adoption;
 - ~~e.d.~~ Placement of an Indian child according to the Indian Child Welfare Act and North Dakota Century Code chapter 27-19.1;
 - ~~d.e.~~ Placement in the best interests of the child;
 - ~~e.f.~~ Placement with identified relatives ~~or extended family members~~ if it is in the best interests of the child; in the event a relative search is completed by the child-placing agency, diligent search efforts must be documented;
 - ~~f.g.~~ ~~Placing~~Placement of siblings together, and if this is not possible, a plan to keep separated siblings connected after adoption;
 - ~~g.h.~~ Placement to meet each child's ~~distinctive~~ needs;
 - ~~h.i.~~ Prohibition of placement of a child based solely on the ~~basis of~~ race, ~~color,~~ or national origin of the adoptive ~~or foster parent~~parents or the child ~~involved,~~ unless the Indian Child Welfare Act or North Dakota Century Code chapter 27-19.1 applies;
 - ~~i.j.~~ Continuation of services to assist the child and family; ~~and~~
 - ~~j.k.~~ ~~Delivery of a copy of the child's current medical records~~Providing relevant child specific documents to the child's adoptive parents; and
 - l. Adoption-related policies required by the department.
2. The child-placing agency shall give notice to the department of any ~~child-placed~~adoptive placement facilitated by the child-placing agency for adoption. The child-placing agency shall provide notice within ~~two weeks~~seven calendar days of placement ~~on the form prescribed by the department.~~

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-06, 50-12-08

75-03-36-30. Adoption - Post-placement and post-finalization.

1. Post-adoptive placement, until adoption finalization. The child-placing agency shall have policy and procedure detailing:
 - a. ~~Make continuing supportive~~ Supportive services offered and available for ~~children~~ the child and ~~families~~ adoptive family following adoptive placement;
 - b. ~~Interview all~~ Monthly visitation with the adoptive parents and other members of the adoptive family ~~in the family home, as applicable;~~
 - c. ~~Have~~ Monthly face-to-face visits with the child ~~on a monthly basis~~ primarily in the child's residence ~~and the content of the visits must be documented in the child's file;~~ and
 - d. ~~Provide assistance~~ Assistance provided to the adoptive family in completing the legal adoption of the child; ~~and~~
 - ~~e. Make post-finalization services available to adoptive parents, birth parents, and the adopted child or adult, when needed. Minimally, the agency shall provide for:~~
 - ~~(1) An exchange of pictures and letters between birth and adoptive families consistent with contact agreements;~~
 - ~~(2) Adoption search services; and~~
 - ~~(3) Information and referral services.~~
2. Post-finalization. The child-placing agency shall have policy and procedure detailing:
 - a. Supportive services offered and available to adoptive parents, birth parents, and the adoptive child or adult, as applicable;
 - b. Exchange of information between birth and adoptive families consistent with contact agreements; and
 - c. Information and referral services, including the North Dakota post adopt network.
3. The child-placing agency ~~may charge a reasonable fee for~~ shall have policy and procedures detailing adoption search services specific to the process, availability, and fees charged.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~ 50-12-05

75-03-36-31. Adoption - Services to prospective adoptive parents.

1. A child-placing agency serving minority race children shall have a recruitment plan that actively recruits homes of the same race as the adoptive children to preserve the adoptive child's culture.
2. The child-placing agency shall provide information to a prospective adoptive parent about the adoption process, the child-placing agency's policies and practices, legal procedures, and the approximate time the adoption process will take, adoptive standards, children available, the availability of a subsidy if appropriate, and a payment schedule which clarifies provision of services, dates of payment, and an estimate of final costs.

3. The child-placing agency shall provide education to a prospective adoptive parent to ensure they have a well-rounded understanding regarding trauma, the needs of an adoptive child, and the importance of maintaining biological and cultural connections.

4. The child-placing agency shall require the prospective adoptive parent of a foreign-born child to purchase a surety bond, or have five thousand dollars in savings, to provide financial protection for a possible disruption, or unexpected medical costs prior to finalization unless the adoptive parent is provided a copy of the decree of adoption from the foreign court at the time of finalization in the foreign country.

~~4.5.~~ The child-placing agency shall document ~~the following information in the applicant's record and~~ a summary of the information ~~must be recorded in~~ and maintain on file the adoption assessment:

~~a. Motivation for adoption;~~

~~b. Strengths and challenges of each member of the family;~~

~~c. The attitudes and feelings of the family members and extended family regarding adoption, with emphasis, if indicated, on attitudes and feelings about potential special needs and foreign-born children;~~

~~d. Evidence of stability of the adoptive parents' marital or other significant relationships;~~

~~e. The applicant's understanding of and plans for assisting a minority or foreign-born child to understand and value the child's racial and cultural background;~~

~~f. Attitudes of the applicant toward the birth parents and the birth parents' reasons for placement;~~

~~g. The applicant's plan for discussing adoption with the child;~~

~~h. The applicant's emotional stability and maturity, including a history of treatment for substance abuse, mental health concerns, abuse or neglect issues, or other issues impacting the applicant's emotional stability and maturity. If indicated, the child-placing agency shall make arrangements for psychological evaluation of the applicant's emotional stability and maturity;~~

~~i. The applicant's parenting skills and willingness to acquire additional skills needed for the child's development;~~

~~j. The attitude of the applicant's birth children or previously adopted children about adoption, if applicable;~~

~~k. Reports of the physical examination of the applicant or self-disclosure of medical concerns, current within the last twelve months;~~

~~l. The applicant's ability to provide financially for the child to be adopted with or without financial assistance under subsidized adoption, including the availability of health insurance;~~

~~m. The applicant's references, including at least five personal and community character references;~~

~~n. The applicant's religious preference, if any;~~

~~o. Description of the applicant's home and community;~~

- ~~p.~~ Substitute care for child care if the applicant works;
- ~~q.~~ Plans for care of the child in the event of the death of the applicant after the adoption;
- ~~r.~~ Results of fingerprint-based criminal history record investigation and child abuse and neglect index investigations; and
- ~~s.~~ Recommendations for adoption in regard to number, age, sex, characteristics, and special needs of children best served by the applicants. An adoption assessment must be completed in the form and manner prescribed by the department which must include onsite visits of the prospective adoptive parent's home to assess physical safety, personal beliefs, motivation and commitment to adopt, relationship status, support systems, financial stability, substance use, mental and behavioral health stability, plans to support the child's long-term needs, cultural and biological family connections, plan for care of the child in the event of death and any supplemental information determined necessary and collected throughout the assessment process.

~~5-6.~~ During the course of the study assessment, the child-placing agency shall keep the applicant informed of the applicant's status ~~with the child-placing agency~~. When an applicant is denied a positive recommendation for adoption, the child-placing agency shall inform the applicant, in writing, of the reasons the child cannot be placed in the applicant's home. The child-placing agency shall offer services to the applicant as needed.

~~6-7.~~ The child-placing agency shall require an adoptive family assessment be updated at least every two years from the date of completion of the original assessment until a child is placed into the home for the purpose of adoption.

~~7-8.~~ The child-placing agency shall have regular contact with an approved waiting adoptive family to assess their circumstances and ~~current~~ ability to receive adopt a child for adoptive placement.

~~8-9.~~ The child-placing agency shall develop a policy and procedure to allow applicants to grieve the services provided by the child-placing agency ~~and to allow prospective adoptive parents to appeal or to grieve~~ the child-placing agency's decision regarding adoption assessment denial.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-07, 50-12-08

75-03-36-32. Adoption - Case plan for adoption.

1. The child-placing agency shall develop a written case plan for each client. The case plan must include a description of specific services to be provided ~~and to meet the needs of the birth parents, the child, and the prospective adoptive parents. The case plan must include goals and the time frames for meeting these goals~~ specifying timelines to achieve permanency for the child.
2. The child-placing agency shall review the case plan ~~periodically~~ annually.
- ~~3. The child-placing agency shall develop the case plan cooperatively with the client, including with a child when developmentally appropriate.~~
- ~~4. The case plan must be signed and dated by the client.~~
- ~~5. The case plan must be signed and dated by the case manager~~ and other relevant parties as determined appropriate.

- 6.4. For a child in the custody of a tribe or a human service zone, the case plan must be directed by the child's custodial agency, the child, if appropriate, and with input from members of the child and family team.
- 7.5. For a child in the custody of the child-placing agency, the child-placing agency may direct the case plan.
- 8.6. For a child in the custody of a birth or adoptive parent, the legal custodial parent may direct the case plan.

History: Effective April 1, 2010; amended effective July 1, 2020; April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-06

75-03-36-33. ~~Client adoption case~~Adoption - Case records.

1. The child-placing agency shall maintain a ~~current and systematically filed~~ case record on each client served. The child-placing agency shall maintain a master ~~file or card catalog on list detailing~~ all case records ~~of~~managed by the child-placing agency. The child-placing agency shall adopt a policy regarding the retention of the permanent adoption record.-

2. The child's case records must include the following:

- a. ~~A face sheet with current addresses of parents of child clients or other significant persons~~The child's full name, date of birth, and other identifying information;
- b. The child's referral information;
- c. The child's birth record;
- d. Application documents, including a photo of the child, if recruitment is needed;
- e. Record of the child's placement history with names of caregivers and dates of placement;
- e.f. ~~Child-placing agency assessments and supporting documentation, including criminal history record investigation, child abuse and neglect index investigation results, and medical records with significant family health history for the adoptive parents;~~
- d.g. ~~Medical records with significant family health history for the child and any~~the child's birth parent;
- e.h. ~~Signed statements authorizing necessary medical or surgical treatment for the child; —~~
~~f. Correspondence;~~
- g.i. Legal documents;
- h.j. Child-placing agency agreements or contracts;
- i.k. Reports from schools, specialists, and other agencies;
- j.l. A case ~~service~~ plan; and
- k.m. ~~Dated, ongoing records of treatment, supervisory visits, conferences~~All relevant correspondence regarding the child's treatment, visits, and contacts with other persons concerning services provided to the clientchild.

2.3. The prospective adoptive parent's case record must include the following:

- a. Fingerprint-based criminal background check;
- b. Child abuse and neglect index check, initially and annually thereafter, if applicable;
- c. Medical records, if applicable;
- d. Adoption assessment;
- e. Other pertinent documentation;
- f. Physical examination, if applicable; and
- g. In the event ~~a family is~~ prospective adoptive parents are denied a ~~positive~~ recommendation for adoption or did not have a child placed with them, the child-placing agency shall keep on file a narrative clearly indicating the reason and the manner in which the decision was presented to the family.

4. The birth parent case record must include the following, if applicable:

- a. Application documents;
- b. Medical and health history; and
- c. Family genealogy and social history.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-05

75-03-36-34. Adoption - Placement disruption.

The child-placing agency shall:

1. Report immediately to the department any adoption placement disruptions;
2. Provide services to assist the child with ~~feelings of anger, separation, and~~ managing the loss that occur after an adoption a placement disruption;
3. Assess the needs of the child when considering replacement options;
4. ~~Offer counseling~~ Provide services to assist the adoptive parents ~~to assist them with feelings of anger, separation, and~~ in managing the loss after a placement disruption; and
5. Assess the needs of the adoptive family with whom the child was placed at the time of the disruption prior to considering any future adoptive placement.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-05

75-03-36-35. Foster care ~~services related to child-placing agencies~~ - Programs and services.

1. The child-placing agency shall adopt a written program description, which includes the following:
 - a. ~~The purpose or mission of the child-placing agency, as it relates to the child-placing agency's role as a child-placing agency;~~

~~b.~~ A description of the services provided by the child-placing agency, clearly stating which services are provided directly by the child-placing agency and which services are to be provided in collaboration with a human service zone, the division of juvenile services, tribal entities, community resources such as schools, and other appropriate agencies;

b. A description of how the child-placing agency engages in wraparound philosophies, and how collaboration efforts occur;

c. A description of how the child-placing agency participates in preparing a child in foster care to transition to adulthood, if applicable;

~~e.d.~~ Characteristics and eligibility requirements of ~~individuals appropriate for referral to a child served by~~ the child-placing agency may not exceed the requirements for children working with a human service zone, tribe, division of juvenile services, or the department;

~~d.e.~~ A list of information that is required to be submitted with the referral;

f. Foster care providers must be licensed in accordance with North Dakota Century Code chapter 50-11 and chapter 75-03-14; and

~~e.g.~~ Acknowledgment that final decisions regarding a child referred to the child-placing agency rest with the custodian pursuant to the authority and responsibility conferred on the custodian under North Dakota Century Code ~~section 27-20-38~~chapter 27-20.3.

2. The child-placing agency shall have a written ~~intake, admission, and discharge~~ policy. The written policy must include:

a. ~~An assessment process for~~A screening of referrals, including a method of determining the appropriateness of each referral, including the age, ~~sex~~gender, and characteristics of a child eligible for ~~child~~ placement;

b. Verification that a child referred to the child-placing agency and accepted for services ~~is under the age of eighteen at the time of intake and is determined to be:~~

~~(1) Unable to receive parental care in the child's own home;~~

~~(2) Potentially capable of accepting other family ties;~~

~~(3) Able to participate in family and community life without danger to self or others; and~~

~~(4) Verification that acceptance for services would not hinder an adoption plan~~meets the criteria for admission and placement into a family setting;

~~c. A child-placing agency engaged in providing therapeutic foster care services must follow all requirements contained in the department's policy found at manual chapter 624-05~~Requirements specific to a child in foster care as defined by the department;

~~d. A requirement that the child-placing agency will provide services to a child referred to the child-placing agency's care without discrimination on the basis of race, color, national origin, religion, or sexual orientation;~~

~~e.~~ A requirement that the child-placing agency accept a child for placement ~~only when legally authorized to do so~~who meets eligibility criteria;

~~f.e.~~ A process for assisting the applicant or referral source, or both, in obtaining services from other agencies when the child-placing agency's services are not appropriate to the applicant's or referral source's needs; and

~~g-f.~~ A requirement that the child-placing agency discuss with the child and the child's parent, guardian, or custodian, the suitability~~appropriateness~~ of the child-placing agency's services in meeting the child's identified~~needs, including client rights~~.

3. The child-placing agency shall have a written discharge policy, including the development of a discharge plan. The written policy and plan must include:

a. Names of individuals involved in discharge planning;

b. The date of admission;

c. The date of discharge;

d. Details of the events and circumstances leading to the decision to discharge;

e. The names and address of the individual or agency to whom the child is discharged;

f. A summary of services provided during placement;

g. A summary of goal achievement;

h. A summary of the child's continuing needs;

i. Appointments scheduled;

j. A list of medication prescribed; and

k. A summary of efforts made by the child-placing agency to prepare the child for discharge.

4. A licensed child-placing agency shall work with the department to set the child-placing agency's foster care fee for service rate, inclusive of clothing and personal incidentals.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-12-05

Law Implemented: NDCC ~~50-12~~50-12-05, 50-12-07

~~75-03-36-36. Child-placing agencies' file and documentation requirements for foster care placements~~Foster care - Program files.

1. The child-placing agency shall ~~adopt a written file and documentation policy requiring that, within thirty days after placement, the child-placing agency establish and thereafter maintain a~~ file for each child. This file must include:

a. The child's full name, ~~birth~~date of birth, ~~age,~~ and ~~gender~~other identifying information;

b. ~~Name~~The name and contact information, ~~including that of the~~a custodian, ~~parents~~parent, or guardian, and other pertinent individuals;

c. ~~A signed~~Signed care agreement, ~~or~~ contract, ~~or current court order~~ establishing the child-placing agency's authority to accept and ~~care for~~place the child;

d. An explanation of custody and legal responsibility for consent to any medical or surgical care;

e. An explanation of responsibility for payment for care and services;

f. A current ~~care~~case plan;

g. A copy of the appropriate interstate compact forms, if applicable;

- h. ~~Copies of periodic, at least quarterly, written~~ Progress reports that are developed by the child-placing agency and provided at least quarterly to the child's ~~parent, guardian, or legal custodian, parent, or guardian;~~
- i. Medical records, including annual health tracks screenings, immunization records, and evidence of appropriate medical followthrough; ~~immunization records, and height and weight records; and~~
- j. ~~Records of annual dental examinations, including necessary dental treatments such as prophylaxis, repairs, and extractions;~~
- ~~k. School records, including individual education plans, if applicable; and~~
- ~~l. Records of eye examinations at intervals not to exceed two years. Children who are in need of glasses shall be supplied with glasses as required.~~

2. The child-placing agency shall ~~adopt a written file and documentation policy ensuring that the child-placing agency shall maintain a current and systematically filed case record~~ file on each foster family served. ~~Permanent case records shall be kept in locked, fire-resistant filing cabinets. There shall be a master file or card catalog on all case records of the child-placing agency. The case records shall include at least the following~~ foster care provider, including:

- a. ~~A face sheet with current~~ Current contact information for foster ~~parents and other significant persons~~ care providers;
- b. ~~Application~~ Initial and renewal licensing documents;
- c. Fingerprint-based criminal background checks;
- ~~d. Initial and annual child abuse and neglect index checks;~~
- ~~e. Agency~~ Child-placing agency specific assessments and supporting documentation, ~~including criminal history and child protection services registry check results;~~
- ~~d. Medical records with significant family health history and signed statements authorizing necessary medical or surgical treatment;~~
- ~~e.f. Correspondence;~~
- ~~f. Licensing documents; and~~
- g. Child-placing agency agreements or contracts.

History: Effective April 1, 2010; amended effective January 1, 2012; April 1, 2024.

General Authority: NDCC 50-12-05, 50-12-07

Law Implemented: NDCC ~~50-12~~ 50-12-05, 50-12-07

75-03-36-37. Child and family plan of Foster care for foster children- Case plan.

The child-placing agency shall adopt a written policy that ensures the child-placing agency will develop a ~~written plan of care for~~ case plan for each child and family. The policy must ~~require~~ detail:

- 1. The ~~child-placing agency develop the care~~ development of a case plan, within thirty days of placement, in conjunction with the child and family team;
- 2. ~~The child's care plan be developed or reviewed within thirty days of placement with the child-placing agency;~~

- ~~3.~~ The child's care plan be developed or reviewed with the appropriate participation and informed consent of the child or, when appropriate, the child's guardian or custodian;
- ~~4.~~ Documentation ~~that the child and the child-placing agency representative have participated of~~ participation in child and family team meetings on a quarterly basis, ~~and that input has been obtained from the custodian, child, family, foster family, and other pertinent team members;~~
- ~~5.3.~~ Documentation ~~that the child-placing agency has collaborated and communicated at regular intervals with~~ of services provided by other agencies ~~that are working with the child to ensure coordination of services and to carry out the child's plan~~ inclusive of behavioral and physical health needs;
- ~~6.~~ Documentation of services provided by other agencies, including arrangements that are made in obtaining them;
- ~~7.4.~~ Documentation of ~~the arrangements by which~~ the child's special needs, including prescribed medication, diets, or special medical procedures, are met if applicable; ~~8.~~ ~~The child-placing agency to provide for annual dental examinations including necessary dental treatments such as prophylaxis, repairs, and extractions;~~
- ~~9.5.~~ ~~The child-placing agency make~~ Documentation of reasonable efforts to gather relevant case planning information from the custodian, parents, foster parents care providers, courts, schools, and ~~any~~ other appropriate individuals or agencies;
- ~~10.6.~~ Completion of a strengths and needs assessment of the child, biological family, and foster family care provider;
- ~~11.7.~~ Identification of measurable goals, including time frames for completion;
- ~~12.8.~~ Identification of the measures that will be taken or tasks that will be performed to assist the child and family with meeting the goals;
- ~~13.9.~~ Identification of the individual or entity responsible for providing the service or completing the task;
- ~~14.10.~~ A discharge plan, including a projected discharge date with special attention to discharge planning efforts for a child who is aging out of ~~the foster care system;~~ and
- ~~15.11.~~ ~~The child-placing agency to document~~ Documented evidence of individualized treatment progress in a child's service case plan ~~evidence of individualized treatment progress, to review the plan reviewed~~ at least ~~every thirty days~~ quarterly, or more often if necessary, ~~to determine if services are adequate and still necessary or whether other services are needed.~~

History: Effective April 1, 2010; amended effective January 1, 2012; April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-11-03, 50-12-05

75-03-36-38. Foster care - Family foster homes - Recruitment - Licensing - Foster parent training - Support care provider.

The child-placing agency shall adopt a written ~~family foster home~~ policy that ~~encompasses the following~~ describes how the child-placing agency will:

1. ~~The child-placing agency shall recruit family~~ Recruit foster homes care providers and evaluate the homes' suitability to meet the individual and specialized needs of children ~~accepted for~~

family in foster care, including ~~those with physical, mental, and emotional disabilities~~ identifying providers who support cultural diversity and inclusion;

~~2. The child-placing agency shall recruit foster parents who have experience or who have the personal characteristics and temperament suited to working with a child placed in their home, who can provide a child with care, protection, and the relationships and experiences that foster normal, healthy childhood development;~~

~~3. The child-placing agency shall make efforts to recruit family foster homes which reflect the race of children being served;~~

~~4. The child-placing agency shall arrange for licensing family License foster care providers as follows:~~

~~a. Family foster homes must be licensed according to North Dakota Century Code chapter 50-11 and North Dakota Administrative Code chapter 75-03-14; and~~

~~b. Providers of therapeutic family foster care must meet the requirements of department policy found at manual chapter 624-05;~~

~~5.3. The child-placing agency shall place Place children only in foster care in licensed family foster care provider homes;~~

~~6.4. The child-placing agency shall make Make available, and shall ensure the foster parents care providers complete, the following training:~~

~~a. Fire prevention training as specified in North Dakota Century Code section 50-11-01.5;~~

~~b. Training requirements contained in North Dakota Administrative Code chapter 75-03-14;~~

~~c. Training requirements contained in department policy found in manual chapter 622-05, foster care for children licensing standards; and~~

~~d. Training requirements contained in department policy found in manual chapter 624-05, foster care services – permanency planning policies and procedures, required training for foster parents providing specialized care orientation and required training;~~

~~7.5. The child-placing agency shall provide for Provide ongoing supervision of foster parents to ensure foster parents care providers have the training necessary to provide quality care; and~~

~~8.6. The child-placing agency shall provide, and ensure that Ensure foster parents care providers have the necessary support from the child-placing agency; and the child welfare system and shall provide an orientation to foster parents on the child-placing agency's policies; and~~

~~9. The child-placing agency shall ensure staff and foster parents have training in, precautions for severe weather, first aid, and cardiopulmonary resuscitation custodial agency.~~

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC ~~50-12~~50-11-03, 50-11-04, 50-12-05

75-03-36-39. Foster care ~~placements~~ Placements.

The child-placing agency shall create and maintain written policy outlining how the child-placing agency will evaluate placement decisions. The evaluation must consider ~~the appropriateness of initially placing a child with a specific foster family~~ initial and ~~must provide for~~ ongoing assessment of the appropriateness of the placement. ~~Additionally, the~~ The evaluation must include:

1. The identification of the appropriate foster care provider to meet the child's needs;
2. The child's view of the placement and of the foster family;
- ~~2.3.~~ The foster parent's~~care provider's~~ commitment to the child's best interests;
- ~~3.4.~~ The foster parent's~~relationship with~~care provider's ability and willingness to accept and support the biological family ~~and support of the biological family; and~~
- ~~4.5.~~ Evidence that the placement supports the child's~~maintaining family and sibling connections, visitation,~~ educational ~~needs, including avoiding change of school placement;~~
- ~~5.~~ Evidence that the placement supports the child's religious and spiritual needs;
- ~~6.~~ Evidence that the placement supports the child's cultural needs;
- ~~7.~~ An assessment of the quality of the relationship between the foster family and child;
- ~~8.~~ An assessment of the foster family's ability to accept and work with the child's birth family, when applicable;
- ~~9.~~ Evidence that the placement supports maintaining sibling connections, i.e., siblings are being placed together, or the vicinity of the placement encourages sibling visits and contacts;
- ~~10.~~ Evidence that the placement supports appropriate parent-child visits and contacts; and
- ~~11.~~ Use of staff trained to determine the needs of children and their families, to assess placement resources for children found to be in need of placement, and to make decisions necessary to effect appropriate placements, religious, spiritual, and cultural needs.

History: Effective April 1, 2010; amended effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-05

Law Implemented: NDCC 50-1250-11-03, 50-12-08

75-03-36-40. Service delivery.

Repealed effective April 1, 2024.

- ~~The child-placing agency shall develop written policy addressing the service delivery component of its programming, including the following:~~
- ~~1. A description of how the child-placing agency engages in the child and family team and wraparound philosophies, and how collaboration efforts occur;~~
 - ~~2. A description of how the child-placing agency provides services for a child to accommodate the child's needs, either directly or through cooperative arrangements with other agencies;~~
 - ~~3. A description of how the child-placing agency demonstrates that it is guided by the best interests of the child in all matters relating to services for children;~~
 - ~~4. Regarding religion and spirituality, a requirement that:

 - ~~a. The child-placing agency assess the religious and spiritual needs of the child and the child's family upon admission;~~
 - ~~b. The child-placing agency give appropriate consideration to the religious and spiritual needs requests of the child and the child's family when determining programming and placement;~~~~

- ~~c. The child-placing agency and foster parents respect the religious and spiritual beliefs of the child and the child's family;~~
- ~~d. The child-placing agency and foster parents make opportunities available for the child to attend religious and spiritual ceremonies of the child's choosing within the area in which the child is placed, whenever possible; and~~
- ~~e. The child-placing agency document the religious and spiritual activities in which the child participates;~~
- ~~5. Regarding culturally sensitive programming, a requirement that:~~
 - ~~a. The child-placing agency assess the cultural needs of the child and the child's adoptive and birth families upon admission;~~
 - ~~b. The child-placing agency give appropriate consideration to the cultural needs of the child and the child's adoptive and birth families when determining programming and placement;~~
 - ~~c. The child-placing agency and foster parents respect the cultural beliefs of the child and the child's adoptive and birth families;~~
 - ~~d. The child-placing agency and foster parents make cultural opportunities available within the area in which the child is placed, whenever possible; and~~
 - ~~e. The child-placing agency document its efforts to meet the cultural needs of the child and the child's adoptive and birth families;~~
- ~~6. Regarding educational needs, a requirement that:~~
 - ~~a. The child-placing agency provide opportunities for academic and vocational training;~~
 - ~~b. The child-placing agency attempt to place a child to maintain the child's current school placement; and~~
 - ~~c. When applicable, the child-placing agency document the reasons why a child had to change schools due to placement;~~
- ~~7. Regarding how the child-placing agency supports the state's efforts to maintain sibling connections, a requirement that:~~
 - ~~a. The child-placing agency make efforts, and document efforts made to place siblings together;~~
 - ~~b. The child-placing agency document the reasons siblings were not placed together;~~
 - ~~c. The child-placing agency arrange sibling visits and contacts;~~
 - ~~d. The child-placing agency document visits between siblings; and~~
 - ~~e. The child-placing agency educate foster parents on the importance of sibling visits, state requirements regarding these visits, and assist the foster parents with overcoming obstacles regarding sibling visits;~~
- ~~8. Regarding how the child-placing agency supports the child welfare system's parent and child visitation policy, a requirement that:~~
 - ~~a. The child-placing agency arrange visits between a child and the child's parents;~~

- ~~b. The child-placing agency document the visits between parents and a child in care;~~
- ~~c. When visits are not occurring as required, the child-placing agency document efforts made, and the reasons the visits are not occurring; and~~
- ~~d. The child-placing agency educate foster parents on the importance of parent-child visits, and that the visits are required, and assist the foster parents with overcoming obstacles regarding these visits;~~
- ~~9. Regarding the clothing and personal items allowance available to foster children, a requirement that:~~
 - ~~a. The child-placing agency provide each child with clothing, which is individually selected and fitted, appropriate to the season and comparable to that of other children in the community; and~~
 - ~~b. The child-placing agency provide each child with age-appropriate personal hygiene items;~~
- ~~10. Addressing how the child-placing agency will participate in preparing adolescents with the skills required for them to live independently;~~
- ~~11. Requiring that services are delivered by, or under the supervision of, professionally trained staff who:~~
 - ~~a. Possess knowledge of child development, family dynamics, and the effects of separation and loss within the child's developmental level;~~
 - ~~b. Have specialized knowledge, skill, or experiences required to provide or locate resources most suitable to the needs of a child in foster care and to help the child and the foster parents make effective use of those resources;~~
 - ~~c. Help foster parents improve their parenting skills and teach foster parents what they need to know in caring for a child who is not their own; and~~
 - ~~d. Work collaboratively with the legal custodian in coordinating services for a child, the child's parents, and foster parents to achieve permanent arrangements for the care of the child; and~~
- ~~12. Commitment to the involvement of the child's parents in planning for the child.~~

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-41. Rights of the foster child.

Repealed effective April 1, 2024.

- ~~The child-placing agency shall have written policy indicating that the agency supports the rights of foster children. Specifically, the child-placing agency shall:~~
 - ~~1. Respect the religious beliefs of the child;~~
 - ~~2. Respect the biological family;~~
 - ~~3. Ensure the child has visits and contacts with parents and siblings on a regular basis when not contraindicated by the custodial agency;~~

- ~~4. Allow the child to have personal property and a place for safe storage of that property;~~
- ~~5. Ensure programming takes into account cultural sensitivities;~~
- ~~6. Allow the child to express the child's opinions on issues concerning the child's care or treatment;~~
- ~~7. If developmentally appropriate, ensure the child's participation in child and family team meetings;~~
- ~~8. If developmentally appropriate, ensure the child's input into the child's plan of care;~~
- ~~9. Ensure the child's right to safety, permanency, and well-being; and~~
- ~~10. Outline the process that can be utilized by the foster child if the child feels the child's rights are not being protected.~~

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-42. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any child provided care by the child-placing agency and no variance may be granted except at the discretion of the department. A child-placing agency shall submit a written request to the department justifying the variance. A refusal to grant a variance is not subject to appeal.

History: Effective April 1, 2024.

General Authority: NDCC 50-11-03, 50-12-02, 50-12-05

Law Implemented: NDCC 50-11-03, 50-12-02, 50-12-05

CHAPTER 75-03-40
LICENSING OF QUALIFIED RESIDENTIAL TREATMENT PROGRAM PROVIDERS

Section

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75-03-40-01. Definitions.

As used in this chapter:

1. "Accredited" means to be accredited and in good standing by an independent, not-for-profit organization approved by the department. Accreditation organizations preapproved include the commission on accreditation of rehabilitation facilities, the joint commission, or the council on accreditation. Any other accrediting bodies must be approved by the federal health and human service office before the department can consider approval.
2. "Aftercare" means followup support and services provided to a resident and family after discharge from a facility.
3. "Assessment" means the ongoing process of identifying and reviewing a resident and the resident's family's strengths and needs based upon input from the resident, the resident's family, and others, including community members and health professionals.
4. "Behavior management" means techniques, measures, interventions, and procedures applied in a systematic fashion to prevent or interrupt a resident's behavior and promotes positive behavioral or functional change fostering resident self-control.
5. "Care plan" or "case plan" means the plan developed by the child and family team that incorporates formal and informal services and supports into a comprehensive, integrated plan that, using the identified strengths of the resident and the resident's family, addresses the needs of the resident and the resident's family across life domains to support the resident and the resident's family to remain in or return to the community.
6. "Child and family team" means an advisory or recommending group in relation to the resident's case plan. The custodial agency and child and family team, led by the resident and the resident's family, shall work cooperatively through multiagency and multidisciplinary approaches to provide a wider variety of support services to the resident, the resident's family, and foster care provider to carry out the permanency goals for the case plan.
7. "Contracted service providers" means ~~a person~~an individual or entity under contract or agreement with the facility to provide services and supports to residents.
8. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the resident has been given by court order.
9. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
10. "Facility" means a qualified residential treatment program.
11. "Guardian" means a person who stands in loco parentis to a resident or court appointed pursuant to North Dakota Century Code chapters 30.1-27 or 30.1-28.
12. "License" means a facility that is either licensed by the department or approved by the department if the facility is located within a tribal jurisdiction.

13. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident may not easily remove which restricts freedom of movement or normal access to the resident's body.
14. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern providing a specific service under the supervision of an employee.
15. "Normalcy" means a resident's ability to easily engage in healthy and age or developmentally appropriate activities that promote the resident's well-being, such as participation in social, scholastic, and enrichment activities.
16. "Nurse" means a nurse licensed in accordance with North Dakota Century Code chapter 43-12.1.
17. "Outcomes" means the results to which all performance targets must contribute, describing specific states or conditions that change, and which are influenced by the achievement of performance targets.
18. "Overnight hours" means a consecutive eight-hour period of time designated as resident sleep hours defined by the facility.
19. "Personnel" means employees hired and nonemployees placed with or present in the facility.
20. "Qualified individual" means a trained professional or licensed clinician designated by the department to complete the assessment, which will assist in determining the resident's appropriate level of care.
21. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a resident while at the same time encouraging the emotional and developmental growth of the resident participating in extracurricular, enrichment, cultural, and social activities.
22. "Resident" means an individual under the age of twenty-one admitted to and residing in the facility.
23. "Restraint" means a personal restraint that only involves an application of physical force without the use of any device, for the purpose of restraining the free movement of a resident's body.
24. "Seclusion" means involuntarily confining a resident alone in a room or area where the resident is prevented from leaving.
25. "Trauma informed" is the services or programs to be provided to or on behalf of a resident and the resident's family under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma in accordance with recognized principles of a trauma informed approach and trauma specific interventions to address trauma's consequences and facilitate healing.
26. "Trauma informed treatment" means a treatment model designed to address the identified needs, including clinical needs as appropriate, of the resident with serious emotional or behavior disorders or disturbances and is able to implement the treatment identified for the resident by the assessment completed by the qualified individual.
27. "Treatment" means the use of interventions that prevent or cure disease, reducing symptoms, and restoring the resident to the highest practical functional level.

28. "Treatment plan" means a plan created by the facility which delineates goals, objectives, and therapeutic interventions regarding the appropriate level of care based on the uniqueness of each resident, which considers the perspectives of the resident, the resident's clinical treatment team, family and significant others, which builds on the resident's strengths, and which incorporates a discharge focus.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-00.1, 50-11-03

75-03-40-03. Application for license.

1. Applicants must be accredited and in good standing with one of the department-approved national accreditation bodies.
2. A person may not apply for a license to operate a facility under this chapter until the department has reviewed the need for the additional residential placement resources. To enable the department to make a determination of need for a new qualified residential treatment program facility, the potential applicant shall submit an initial request for application, including the following documentation and information to the department:
 - a. A detailed plan for the operation of the proposed qualified residential treatment program which includes:
 - (1) The number, sex, and age range of the residents to be served;
 - (2) The needs or disabilities of residents to be served;
 - (3) The employee staffing, including a list of full-time and part-time positions by job titles and description;
 - (4) A description of the proposed program and treatment goals;
 - (5) A proposed budget; and
 - (6) The location of the facility and a drawing of the layout of the physical plant.
 - b. A detailed written description of the methodology and findings that document the reasons why the unserved children under subsection 2 may not be served satisfactorily in a less restrictive setting.
 - c. Data to support that existing qualified residential treatment program placement resources are not adequate to meet the needs of children who require the type or types of care, are North Dakota residents, and require the treatment services the applicant proposes to provide.
3. Upon receipt of initial request for application, the department shall:
 - a. Review the potential applicant's information and may ask for additional materials or information necessary for evaluation of need purposes;
 - b. Respond in writing within ninety days of receipt of all required information from the potential applicant;
 - c. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is need for additional qualified residential treatment program beds, the notice must be accompanied by an authorization

for the person to apply for a license to operate a new qualified residential treatment program; and

- d. Inform the potential applicant of what is required to move forward with the application process.
4. An application for a facility license must be submitted to the department annually in the form and manner prescribed by the department, which shall initiate an annual onsite visit.
5. The applicant shall carry general comprehensive liability insurance.
6. For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.
7. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification.
- ~~8. An applicant currently holding a residential child care facilities license is exempt from compliance with subsection 2.~~

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-03

75-03-40-10. Governance.

1. Each facility shall have a governing body responsible for the operation, policies, activities, practice, and overall operations of the facility. The governing body shall:
 - a. Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member annually shall disclose conflicts of interest. Members of the board may not be family or have conflicts of interest with the facility administrator or employees with budget or accounting duties;
 - b. Meet at least every six months;
 - c. Maintain records of the governing body's meetings;
 - d. Develop and review policies for member selection and rotation;
 - e. Ensure each member understands the facility operation and program goals;
 - f. Ensure the facility is funded, housed, staffed, and equipped in a manner required for the provision of services;
 - g. Provide the most recent fiscal year-end financial records to the department for payment purposes, upon request;
 - h. Ensure the facility has an active strategic plan with a schedule to review annually;
 - i. Employ a qualified facility administrator and delegate responsibility to that facility administrator for the administration of the facility;
 - j. Evaluate the performance of the facility administrator at least annually;
 - k. Adopt a written statement of the purpose and philosophy of the facility; and

- I. Adopt written policies for the facility regarding administration, personnel, buildings, grounds, and program services. Personnel policies for the recruitment and retention of employees necessary to operate the facility must indicate expectations of ~~employees and nonemployees~~personnel, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every three years.
2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into facility practice. The facility policy must be up to date.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-11. Disaster plan.

A facility shall have a written disaster plan to accommodate emergencies. The disaster plan must allow the department or custodial agency to identify, locate, and ensure continuity of services to residents who are displaced or adversely affected by a disaster. The disaster plan must address how to accommodate accessibility needs for all residents and ~~staff~~personnel. The facility shall ensure the disaster plan specifies:

1. Where ~~employees, nonemployees,~~personnel and residents would go in an evacuation, including one location in the nearby area and one location out of the area;
2. Contact information inclusive of phone numbers and electronic mail addresses for facility administration;
3. A list of items the facility will take if evacuated, including any demographic and emergency contact information for each resident and medication and medical equipment to meet the needs of residents;
4. The process the facility will use to inform the department and each resident's custodian and parent or guardian if the resident is displaced or adversely affected by a disaster;
5. Employee training on the disaster plan must detail procedures for meeting disaster emergencies. The review of the disaster plan must occur with employees on an annual basis to ensure it is current, accurate, and employees understand their role. The facility shall document the annual review and provide the documentation to the department upon request;
6. Resident training on the disaster plan ensuring awareness of all emergency and evacuation procedures upon admission to the facility. These procedures must be reviewed upon intake into the facility and every quarter. Resident training must include the performance and documentation of fire evacuation drills;
7. The facility has telephones centrally located and readily available for use in each living unit of the facility. Emergency numbers must be written and posted by each telephone;
8. There must be at least two independent exits from every floor. The exits must be located so that residents can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area; and
9. Flashlights must be available for emergency purposes.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC ~~50-11~~50-11-03

Law Implemented: NDCC ~~50-11~~50-11-03

75-03-40-13. Personnel files.

1. The facility shall maintain an individual file on each employee. The file must include:
 - a. File inventory detailing first and last date of employment, reason employment ended, training totals per year, and performance evaluation dates ~~due~~;
 - b. The application for employment including a record of previous employment;
 - c. A job description specifying the employee's roles and responsibilities;
 - d. A statement signed by the employee acknowledging the confidentiality policy;
 - e. Documentation of information obtained from an employee's references if previously employed at another residential facility;
 - f. Annual performance evaluations;
 - g. Professional development and training records consisting of the name of presenter, date of presentation, topic of presentation, and length of presentation. The following training must be completed and required training certificates placed in the employee file:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Nonviolent crisis intervention;
 - h. Evidence of the employee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter;
 - i. Results of fingerprint-based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - j. Any other evaluation or background check deemed necessary by the facility administrator of the facility; ~~and~~
 - k. Verification of any required license or qualification for the position or tasks assigned to the employee; and
 - l. A copy of a valid driver's license, if applicable.
2. The facility shall maintain an individual file on each nonemployee. The file must include:
 - a. Personal identification information;
 - b. Results of fingerprint-based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - c. Description of duties;
 - d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; ~~and~~
 - e. Evidence of the nonemployee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter; and

f. A statement signed by the nonemployee acknowledging the confidentiality policy.

3. The facility shall adopt a policy regarding the retention of ~~employee—and—nonemployee~~personnel files.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-14. Facility administrator.

The governing body of the facility shall designate a facility administrator for the facility.

1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator. If the facility is licensed for ten or more residents, the facility shall employ a full-time onsite facility administrator. A facility may not employ a facility administrator less than half-time.
2. The facility administrator must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have four years of related work experience in administration ~~or must be an individual otherwise qualified and employed as a residential child care facility administrator prior to October 1, 2019.~~
3. The facility administrator shall assure adequate supervision is provided to all ~~employees and nonemployees~~personnel working or placed in the facility.
4. The facility administrator shall designate and provide evidence of the designation in the employee's file, at least one employee authorized to apply the reasonable and prudent parent standard. The designated employee shall receive training on how to use and apply the reasonable and prudent parent standard.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-15. Clinical director.

1. The facility shall clearly define, in writing, the responsibilities of the clinical director. The duties of the clinical director must be devoted to the provision of clinical services.
2. The clinical director must have a master's degree in a behavioral science field and must be licensed as required by the field of practice, with three years of work experience in a clinical setting, have experience working with children in need of treatment, and provide evidence of supervisory knowledge and skills ~~or must be an individual otherwise qualified and employed as a residential child care facility program director prior to October 1, 2019.~~

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-16. Treatment coordinator.

1. The facility clearly shall define, in writing, the responsibilities of the treatment coordinator employees including communicating with the resident's custodian, parent, or guardian throughout the week while placed in the facility, to update the resident's custodian, parent, or guardian on the resident's day and treatment progress. The duties of a treatment coordinator employee must be devoted to the coordination of treatment services and overall case

management of treatment planning for residents. A treatment coordinator employee must have achieved the competencies necessary to implement an individualized care plan for each resident.

2. The treatment coordinator employee must have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified ~~and employed as a residential child care facility social service employee prior to October 1, 2019.~~
3. A facility shall have sufficient treatment coordinator employees employed to meet minimum employee-to-resident ratios required by this chapter.
4. A treatment coordinator employee is may be responsible for the supervision of other ~~employees or nonemployees~~ personnel and must be allowed reasonable time to perform supervision tasks.
5. The professional development and training records must document the treatment coordinator employee has had appropriate training to coordinate treatment services and trauma informed care.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-17. Direct care employees.

1. The facility clearly shall define, in writing, the duties and responsibilities of the direct care employees.
2. All direct care employees must:
 - a. Be at least twenty-one years of age;
 - b. Have a high school diploma or equivalent; or
 - c. Have at least one year of experience working with children or families. If a prospective direct care employee does not have one year of experience working with children or families, the facility may choose to hire, but then shall provide shadowing and supervision to the direct care employee for up to one year or until the direct care employee has successfully completed all required training noted in section 75-03-40-29; ~~or~~
 - ~~d. An individual otherwise qualified and employed as a residential child care facility direct care employee prior to October 1, 2019.~~
3. ~~A direct care employee shall complete mental health technician certification.~~
- ~~4.~~ A direct care employee supervising other direct care employees must have a bachelor's degree in a behavioral science field or ~~two years~~ one year previous work experience with children or families.
- ~~5.~~ 4. A facility always shall have direct care employees working to meet the minimum employee-to-resident ratios required by this chapter.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-19. Family engagement specialist.

1. The facility clearly shall define, in writing, the responsibilities of family engagement specialists. The duties of the family engagement specialist must be devoted to the provision of family engagement and aftercare service supports to best meet the needs of the resident and the resident's family custodian, parent, or guardian. The family engagement specialist shall maintain ongoing contact with the resident's family custodian, parent, or guardian as a liaison to the resident's treatment in the facility and postdischarge aftercare planning. Tasks may include:
 - ~~a. Communicating with the resident's family throughout the week to update the family on the resident's day, treatment progress, and challenges;~~
 - ~~b. Offering support to the treatment coordinator ~~employee~~ and the resident's treatment ~~plan~~ planning, while placed in the facility; ~~and~~~~
 - ~~e.b. Providing ~~or~~ and coordinating aftercare services and supports which may include making referrals and scheduling appointments;~~
 - c. Preparing the aftercare plan;
 - d. Communicating with the aftercare client and custodian, parent, or guardian, in collaboration with the treatment coordinator, at least twice per month or more often as needed;
 - e. Planning for crisis management and support to the aftercare client and the client's family; and
 - f. Engaging with community providers to ensure continuity of services documented in the aftercare plan.
2. A family engagement specialist must have achieved the competencies necessary to implement family engagement strategies while the resident is in placement and coordinate an aftercare plan for no less than six months postdischarge.
3. The family engagement specialists must have a bachelor's degree ~~in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified and employed as a residential child care facility social service employee prior to October 1, 2019. A higher degree may substitute for years of experience or the prospective family engagement specialist shall achieve the certification in either peer or family support~~ or a high school diploma and have at least four years of experience working with children and families and have the competencies required by the facility to engage with children and families.
4. A facility shall have sufficient family engagement specialists to meet the needs of the residents and ~~family~~ the resident's parent or guardian during placement and for no less than six months postdischarge.
5. The professional development and training records must document the family engagement specialist has had appropriate training to coordinate treatment services, including family engagement and trauma informed treatment.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-22. Personnel policies.

The facility shall identify to the department all ~~employee and nonemployee~~ personnel positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All ~~employees and nonemployees~~ personnel must be capable of performing assigned duties. The facility shall have clearly written personnel policies for employees and when applicable, nonemployees. The facility shall make the policies available to ~~each employee and nonemployee~~ all personnel. The policies must include:

1. An annual professional training and development plan for all positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures detailing employee supervision and the number of employees one supervisor can supervise. The facility shall require and document annual training for supervisors to maintain and improve competence in the supervisory role and in facility treatment practices;
4. Procedures for employee annual written evaluation;
5. Procedures for ~~employee and nonemployee~~ personnel disciplinary actions and terminations;
6. Procedures for storing personal belongings which may include car keys, cell phones, and ~~employee or nonemployee~~ personnel medication while on duty;
7. Procedures for personnel grievances;
8. Each facility shall implement policy and procedure to address:
 - a. Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by ~~employees and nonemployees~~ personnel to others in the facility;
 - b. Nondiscrimination against ~~an employee or nonemployee~~ all personnel; and
 - c. Steps taken when ~~an employee or nonemployee~~ personnel violates policy, procedures, or licensing standards that affects the mental or physical well-being of a resident; and
9. A plan for review of the personnel policies and practices with employee participation at least once every three years, or more often as necessary. The facility shall document policy reviews, revisions, and employee participants in writing.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-23. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of the residents" include:
 - a. The resident's custodian, parent, or guardian, except to the extent the parental rights have been terminated or limited by court order;
 - b. The referring agency that placed a resident in the facility; and
 - c. An individual or entity identified as a provider of services, as determined by the department, located in the home community of the ~~resident's family~~ resident, for the purposes of reunification.

2. Except as otherwise provided in this section, facility records concerning residents who have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
 - a. To ~~employees and nonemployees~~ **personnel** of the facility, to the extent reasonably necessary for the performance of their duties;
 - b. To persons authorized by a custodian, parent, or guardian who may lawfully review a resident's records, to review or receive copies of that resident's records;
 - c. In a judicial proceeding;
 - d. As required by law;
 - e. To officers of the law or other legally constituted boards and agencies; or
 - e-f. To persons who have a definite interest in the well-being of the residents concerned, who are in a position to serve their interests, and who need to know the contents of the records to assure their well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any current resident or former resident receiving aftercare services or the family of the resident, without first securing the written consent of the custodian and parent or guardian of the resident, or the written consent of an adult who was a former resident of the facility. The facility shall:
 - a. Ensure the written consent is informative, including full disclosure of how the image or information will be used, including any future use, and specifically must identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information;
 - b. Inform the ~~person~~ **individual** signing that the individual is free to either grant or refuse to grant consent;
 - c. Provide a seven-day waiting period during which the consent may be withdrawn by the signing party; and
 - d. Ensure the consent is time-limited. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.
4. A facility shall disclose its records to the department as requested.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05

75-03-40-24. Child abuse and neglect.

1. Upon hire and annually thereafter, all ~~employees and nonemployees~~ **personnel** shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written policies and procedures requiring ~~employees and nonemployees~~ **personnel** to report cases of suspected child abuse or neglect. The procedures must include the following statement: "All ~~employees and nonemployees~~ **personnel** will comply with North Dakota Century Code Chapter 50-25.1, child abuse and neglect. Therefore, it is the

policy of this facility that if any ~~employee or nonemployee~~ personnel knows or reasonably suspects ~~that a current resident or former resident receiving aftercare services whose~~ the health or welfare of a current resident or former resident receiving aftercare services has been, or appears to have been, harmed as a result of abuse or neglect, that ~~employee or nonemployee~~ personnel immediately shall report this information to the department. Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment or placement of nonemployee and referral of the ~~employee or nonemployee~~ personnel to the office of the state's attorney for investigation of possible criminal violation."

3. The facility's policies and procedures must describe:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain;
 - e. The status and discipline of ~~an employee or nonemployee~~ personnel who fails to report suspected child abuse or neglect; and
 - f. The status of the ~~employee or nonemployee~~ personnel while the report is being assessed; if they are the subject of the report.
4. The facility shall cooperate fully with the department throughout the course of any assessment of any allegation of child abuse or neglect made concerning care furnished to a resident. The facility, at a minimum, shall provide the assessors with all documents and records available to the facility and reasonably relevant to the assessment and permit confidential interviews with ~~employees, nonemployees,~~ personnel and residents. Internal facility interviews and investigations are not permitted to occur concurrent with a department assessment or law enforcement investigation.
5. In the case of an indicated determination, the facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken, or plans to take, to comply with any resulting recommendations from the state child protection team. The facility shall make assurances that revised facility practice will reduce the risk of the incident reoccurring. The facility shall respond within thirty days of receiving written notification of the determination.
6. A facility shall establish written policies specific to how the facility will proceed when a current or former ~~employee or nonemployee~~ personnel is known to be:
 - a. Involved in any capacity in a reported incident of institutional child abuse or neglect;
 - b. Involved in any capacity in a reported incident of suspected child abuse or neglect; or
 - c. The subject in a child abuse or neglect report that occurred outside of the facility, where the subject has been confirmed to have abused or neglected a child.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

75-03-40-25. Criminal Background checks and criminal conviction - Effect on operation of facility or employment by facility.

1. The department requires an initial fingerprint-based criminal background check for all personnel with direct contact with residents. Subsequent fingerprint-based background checks are not required for personnel maintaining continuous employment at the facility, unless the department determines a need exists to conduct a subsequent investigation.
2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index check must be completed and placed in the personnel file.
3. A facility administrator may not be, and a facility may not employ or place, in any capacity that involves or permits contact between ~~an employee or nonemployee~~ personnel and any resident cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; ~~12.1-20-12.3, sexual extortion;~~ 12.1-22-01, robbery; if a class A or B felony under subsection 2 of that section; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines the individual has not been sufficiently rehabilitated.
 - (1) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction,~~ for all other criminal convictions has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
- ~~2.4.~~ The department has determined the offenses enumerated in subdivisions a and b of ~~subsection 4~~ subsection 3 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of care to children.
- ~~3.5.~~ In the case of ~~a misdemeanor simple assault~~ offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06,

criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult-penalty, if a class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; of chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction for all other criminal convictions.~~ The department may not be compelled to make such determination.

4.6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

5.7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

- a. Common knowledge in the community verified by source documents;
- b. Acknowledged by the individual; or
- c. Discovered by the facility, authorized agent, or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check if personnel of the facility are known to have been involved in, charged with, or convicted of an offense.

9. Fingerprint-based criminal background check results must be reviewed as follows:

- a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel.
- c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
- e. The final decision of the review panel may not be appealed.

10. The facility shall make an offer of employment to an employee conditioned upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the facility may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee may only have supervised interaction with residents.

11. The department may excuse personnel from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If personnel are

excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the personnel lived during the eleven years preceding the signed authorization for the background check.

~~6.12.~~ A facility shall establish written policies and engage in practices that conform to those policies to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

~~7.13.~~ A facility shall establish written policies specific to how the facility shall proceed if ~~a current employee or nonemployee~~ personnel is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-40-26. Background checks.

Repealed effective April 1, 2024.

- ~~1. The facility shall require a fingerprint-based criminal background check and child abuse and neglect index check be completed for each employee and nonemployee.~~
- ~~2. The facility shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background check, a facility may choose to provide training and orientation to an employee or nonemployee. However, until the approved background check results are placed in the employee or nonemployee file, the employee or nonemployee only may have supervised interaction with residents.~~
- ~~3. The facility shall submit proper paperwork for the department to perform an annual child abuse and neglect index check on every employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.~~
- ~~4. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.~~
- ~~5. The facility previously licensed as a residential child care facility until September 30, 2019, may use the current employee's or nonemployee's fingerprint-based criminal background check results in the personnel file previously completed by the residential child care facility to comply with this section.~~

~~**History:** Effective October 1, 2019.~~

~~**General Authority:** NDCC 50-11-03~~

~~**Law Implemented:** NDCC 50-11-02, 50-11-06.8~~

75-03-40-27. Personnel health requirements.

1. All ~~employees and nonemployees~~ personnel must be capable of performing assigned tasks.
2. All employees shall undergo an initial health screening, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment to verify good physical health to work in the facility. The professional performing the screening shall sign a

report indicating the presence of any health condition that would create a hazard to others in the facility.

3. All ~~employees and nonemployees~~ personnel shall undergo an initial test or screening for tuberculosis, within thirty days after employment or placement, and test results placed in ~~employee and nonemployee~~ personnel files within thirty days of employment.
4. Unless effective measures are taken to prevent transmission, each facility shall develop a policy addressing that ~~an employee or nonemployee~~ personnel suffering from a serious communicable disease must be isolated from other ~~employees, nonemployees,~~ personnel and residents who have not been infected.
5. The facility shall develop a policy regarding health requirements for ~~employees and nonemployees~~ personnel, including how often health screenings and tuberculosis testing will be required by the facility following the initial screening requirements.
6. The facility shall develop a policy requiring all ~~employees and nonemployees~~ personnel to have the ability to carry out their assigned functions and duties. ~~Employees or nonemployees~~ Personnel whose condition gives reasonable concern for safety of residents may not be in contact with residents in placement.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-28. Minimum employee requirements.

1. For purposes of this section:
 - a. "Reside" means to sleep and keep personal belongings; and
 - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. Each facility shall adopt a policy specific to employee coverage for facility operations, including holidays, weekends, on-call clinical team rotations, daytime and overnight hours. Policy must address:
 - a. Designated employees required for the facility on-call clinical team;
 - b. Number of qualified employees onsite to sufficiently meet the needs of residents and respond to emergency situations;
 - c. Evaluation of the number of employees necessary to meet the age, developmental level, length of treatment, and the service needs of the resident population;
 - d. Ability to ensure the safety of all residents and allow adequate space to properly separate residents based on the needs of the facility populations served;
 - e. Ability to schedule same gender or cross gender supervision if indicated by resident treatment needs; and
 - e.f. Employees hired specific to the onsite educational program may not be counted as direct care employees, treatment coordinator employee, family engagement specialist, facility administrator, or a clinical director during any time educational services are provided.

3. Each facility that operates more than one structure in which residents reside shall count the total number of residents admitted to the facility, residing in all structures collectively for purposes of determining the required number of clinical and treatment employees to meet employee-to-resident ratios.
4. Each facility shall comply with the following minimum employee-to-resident ratio requirements:
 - a. A rotating on-call clinical team must be available twenty-four hours a day, seven days a week to meet the needs of resident emergency and crisis situations. The on-call clinical team must include at a minimum one nurse and one clinical employee;
 - b. No less than one half-time facility administrator for a facility providing treatment for up to nine residents;
 - c. No less than one full-time facility administrator for a facility providing treatment for ten or more residents;
 - d. No less than one full-time clinical director;
 - e. No less than one full-time nurse;
 - f. No less than one full-time treatment coordinator employee for each ten residents; and
 - g. No less than one full-time family engagement specialist for each twenty residents or aftercare clients.
5. During awake hours each facility shall meet the standards of the facility's accrediting body or the ratios set forth in this subsection, if the ratios set forth in this subsection are greater than the employee-to-resident ratios set by the accrediting body.
 - a. Two employees who are qualified to provide direct care for one to twelve residents; and
 - b. One additional employee who is qualified to provide direct care for every one through six additional **children**residents thereafter.
6. During overnight hours each facility shall have:
 - a. Awake employees at all times;
 - b. Employee-to-resident ratio at a rate not less than:
 - (1) Two employees who are qualified to provide direct care for one to twenty residents; and
 - (2) One additional employee who is qualified to provide direct care for every one through ten additional **children**residents thereafter; and
 - c. A policy that includes a requirement that an employee will check on residents during overnight hours at a minimum of every fifteen minutes, and more frequently if the acuity of the resident demands greater supervision. The overnight checks must be:
 - (1) Documented and available for review; and
 - (2) Conducted in the least invasive manner to not disrupt the residents.
7. The facility shall notify the department, in writing, if the minimum employee-to-resident ratios are not met based on position vacancies. An interim plan to cover the employee duties must be approved by the department.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-29. Employee professional development.

1. All employees in contact with residents shall receive at least twenty hours of training per year, with evidence of completion in the employee file.
2. Required trainings to prepare employees to meet the needs of residents served by the facility include:
 - a. Certified first aid;
 - b. Certified cardiopulmonary resuscitation and automated external defibrillator training;
 - c. Certified nonviolent crisis intervention training;
 - d. Institutional child abuse and neglect training;
 - e. Facility trauma informed care training;
 - f. Child abuse and neglect mandated reporter training;
 - g. Children's emotional and developmental needs; and
 - h. Suicide prevention training, including identification of signs and facility response measures.
3. A certified instructor shall provide training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. ~~A formal certificate must be provided to each employee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee file.~~ Until a new employee has completed these required trainings, the facility administrator shall ensure that another employee, current in the required trainings, is scheduled to work on the same shift as the new employee pending training.
4. Prior to a new employee working independently with residents, the facility shall provide orientation training to the employee covering all of the following areas, with evidence of completion present in the employee file:
 - a. Facility philosophy and program goals;
 - b. Administrative procedures, policy, and protocols;
 - c. Personnel policies;
 - d. Programs and services offered onsite to residents;
 - e. Residents' emotional and physical needs;
 - f. Facility daily routine, activities, transportation, treatment group schedules, and meals;
 - g. Expected employee conduct toward residents;
 - h. Expected resident conduct while residing onsite;
 - i. Facility's behavior management, including de-escalation techniques;

- j. Overview of trauma and facility trauma informed treatment;
- k. Protocol for observing and reporting resident behavior;
- l. Resident rights and grievance procedures;
- m. Protocol for identifying and reporting of child abuse and neglect;
- n. Suicide prevention, including identifying signs and facility response;
- o. Disaster plan;
- p. Resident search procedures and policies;
- q. Confidentiality standards;
- r. Procedures for reporting a runaway;
- s. Fire safety and evacuation procedures;
- t. Protocol for emergency medical procedures;
- u. Protocol for facility security measures and access to visitors; and
- v. Discuss interest in becoming certified for medication distribution.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-30. Resident file.

1. Upon placement, a resident's case record is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The facility shall adopt a policy regarding the retention of resident records.
2. The resident record must include on file:
 - a. A file inventory with dates of admission, discharge, aftercare, referral source, and emergency contact information;
 - b. The resident's full name, date of birth, and other identifying information;
 - c. A photo of the resident;
 - d. The name and contact information of a custodian and parent or guardian at the time of admission, as well as contact information of additional family members approved to engage in visitation and maintain family connections;
 - e. The date the resident was admitted and the referral source;
 - f. Signed care agreement or contract, including financial responsibility and expectations of all parties. The placement agreement must indicate a clear division of responsibility and authority between the facility and the custodian and parent or guardian;
 - g. Signed written consents, as applicable;

- h. A copy of the initial and all ongoing assessment reports completed by the department approved qualified individual or documentation indicating placement approval or denial if the resident is accepted for an emergency placement;
 - i. A copy of required interstate compact forms, as applicable;
 - j. If the resident is in public custody, a current court order establishing the placement authority of a public agency;
 - k. Treatment progress reports must be provided to the resident, custodian and parent or guardian monthly, or upon request. Any progress reports received at the facility from an outside agency or professional providing services to the resident must be summarized and embedded in the resident's treatment plan;
 - l. Ongoing documentation and case activity logs detailing progress;
 - m. Documentation of discharge planning;
 - n. Visitation records. The facility shall have a formal plan for visitation signed by the custodian and parent or guardian detailing opportunities for the resident to engage in onsite visitation and home visits with family;
 - o. Education records;
 - p. All incident reports involving the resident; and
 - q. Documentation the clinical director, facility administrator, or designated employee has reviewed the resident case record monthly.
3. Resident medical information, including:
- a. Consent for medical care. The facility has obtained written, signed informed consent that gives the facility, resident's physician, or health care consultant the following authority to:
 - (1) Provide or order routine medical services and procedures;
 - (2) Delegate and supervise administration of medications by authorized employees and for such employees to handle, provide the medication to the resident, and provide monitoring of resident self-administration;
 - (3) Obtain medical information, as needed, on the resident; and
 - (4) Provide or obtain an order for medical services and procedures when there is a life-threatening situation, emergency medical procedures, including surgery, when it is not possible to reach the ~~person~~individual or authority authorized immediately to give signed written specific informed consent;
 - b. Documentation about any special nutritional or dietary needs identified;
 - c. Documentation of health history;
 - d. Documentation of any medical treatments received while residing in the facility, including:
 - (1) Dates and ~~person~~individual administering medical treatment;
 - (2) Immunizations;
 - (3) Laboratory tests;

- (4) Routine and emergency health care examinations;
 - (5) Dental examinations and treatment; and
 - (6) Eye examinations and treatment;
 - e. Medication administration records; and
 - f. A copy of the treatment plan prepared by the facility.
4. The resident record must include aftercare supports for six months postdischarge. Information to include:
- a. Contact information for the custodian and parent or guardian and others determined necessary for aftercare;
 - b. Date of discharge and six-month aftercare date of completion;
 - c. Documentation from the family engagement specialist detailing the aftercare or family treatment plan progress;
 - d. Documentation of ongoing communication with the resident, custodian and parent or guardian, and local providers; and
 - e. Upon six-month completion of aftercare, the resident file must include:
 - (1) Summary of the six-month aftercare services provided; and
 - (2) A copy of the department-approved outcomes survey.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-05

75-03-40-32. Respite.

A facility may operate an optional respite care program with approval of the department. Respite care is defined as temporary relief care for a resident with special medical, emotional, or behavioral needs, which requires time-limited supervision and care by a licensed foster care provider. A respite care episode is a specified period of time during which respite care is provided by a licensed provider.

1. **Eligibility.** Residents eligible for respite care offered by an approved facility include a ~~foster~~ child [in foster care](#) in public custody and a former qualified residential treatment program resident engaged in the six-month aftercare.
2. **Admission and discharge.** A facility operating a respite care program shall have the written policies and procedures for admissions and discharge for respite care, including eligibility into the respite program, admissions criteria, required belongings, medications needed upon admission, required identification documentation, authorizations needed, written consents for emergency medical care, medications, and discharge planning.
3. **Staffing.** A facility shall assign an employee to have primary responsibility for the facility's respite care program. Employee-to-resident ratios at a minimum, must meet the ratio as described in this chapter for direct care.
4. **Program and services.** A facility respite program must be developed which allows for a short-term refocus of service delivery and supports for a community placement. Respite care

placements are exempt from the medical examination requirements due to the short period of stay.

5. Respite care plan. A facility shall develop an abbreviated plan for each resident admitted to the facility for respite care. The abbreviated plan must provide for services to meet social, emotional, medical, and dietary needs. The respite plan must address daily routine, engagement in recreational activities, ongoing education, and discharge planning. The respite plan may include a list of facility-based and community-based services and supports the resident and family is currently receiving or will receive upon discharge.
6. Length of stay. A respite care placement may not extend beyond seven days per episode.
7. Discharge. When a resident is discharged from respite care, the facility shall document in the resident's respite file the dates of the resident's stay, a summary of the resident's stay, the name of the person to whom the resident was discharged, and a list of all personal belongings and medications that went with the resident upon discharge. A final plan must be provided to the custodian and parent or guardian upon discharge.
8. Respite resident file. A facility with a respite care program shall include:
 - a. The resident's full name, date of birth, and other identifying information;
 - b. The contact information of the custodian and parent or guardian at the time of admission;
 - c. The date the resident was admitted and discharged;
 - d. Signed respite care agreement;
 - e. Signed written consents, including consent to nonemergency use of psychotropic medication and consent for use of secured unit, if applicable;
 - f. If the resident is in public custody, a current court order establishing the facility's authority to accept and care for any resident under the custody of a public agency;
 - g. Copy of the abbreviated plan prepared by the facility; and
 - h. Medication administration records, if applicable.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-33. Admissions and assessment.

1. Admissions policies and procedures. A facility shall have written resident admission policies and procedures that describe the primary treatment offered onsite, range of presenting behaviors the facility shall treat, and procedures for admitting a resident.
2. Admissions and discharge committee. A facility shall have an admissions and discharge committee with written policy specific to employees on the committee and the timeliness the committee has in responding to referrals. The committee shall meet on at least a weekly basis.
3. Admission determination. The admissions committee shall complete a written, dated, and signed admission determination on a prospective resident which includes a preadmission review and identification of the prospective resident's primary presenting needs. The facility shall provide the admission determination to the referral within seven days of receipt of the completed application. Referral may be completed by:

- a. A public agency, if a prospective resident is in foster care and a public agency is granted custody and given full placement authority pursuant to law or court order; or
 - b. A parent or guardian, if a prospective resident is preapproved by the department as a private placement.
4. Admission conditions. A facility may admit a prospective resident, as determined by the admission determination and the following conditions are met:
- a. Qualified individual - Level of care assessment.
 - (1) Completed assessment. The facility has received documentation from the department-approved qualified individual granting approval for the resident to be admitted to a qualified residential treatment program based on the North Dakota level of care assessment; or
 - (2) Emergency placement. A resident may be admitted to the facility for an emergency placement for a thirty-day level of care assessment period. Emergency placements denied for continued placement may not exceed thirty days from admission. For residents placed in the facility during the thirty-day level of care assessment period, the facility shall allow access to the qualified individual and collaborate in the completion of the required level of care assessment;
 - b. Juvenile court approval. For ~~foster~~-children in foster care, custodial case managers must receive confirmation from the juvenile court approving the qualified residential treatment program placement within sixty days of the resident's date of entry into the facility. A facility is not required to have a copy of the confirmation on file;
 - c. Interstate placements. In accepting a prospective resident from outside the state of North Dakota, the facility shall receive prior written approval under the interstate compact on the placement of children and meet all requirements of section 75-03-40-34;
 - d. Nondiscrimination against a resident; and
 - e. All documentation required for the resident record, including medical consent, medical history, family custodian, parent, or guardian contact information, family history, placement care agreement, and financial responsibility.
5. Orientation. Upon admissions, each resident shall receive orientation to facility living. An employee shall:
- a. Orient the new resident and the custodian and parent or guardian to the facility program;
 - b. Help the new resident to adjust to the effects of ~~separation from family and to the residential placement~~; and
 - c. Provide the new resident and the custodian and parent or guardian copies of the facility rules, including rules on visiting, expected behavior and consequences for rule infractions, resident rights, and grievance and complaint procedures, with explanations of the documents.
6. Initial screenings must be completed immediately or no later than twenty-four hours from admission. A facility shall complete for each resident a:
- a. Suicide risk screening;
 - b. Mental health screening; and

- c. Health screening completed by the facility nurse. The health screening may include documenting height, weight, and identification of any distinct markings, such as a resident's birthmark, tattoos, bruises, or cuts.

7. Discharge date. Each admission must have preliminary plans for discharge.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-35. Treatment plan.

1. A treatment coordinator shall develop a written, individualized treatment plan for each resident. Upon admission, the facility shall conduct an initial assessment of the resident's treatment and service needs and develop a treatment plan. An initial abbreviated treatment plan should be developed immediately for each resident while the formal treatment plan is developed by utilizing the needs assessments and other collateral information within fourteen days. The resident's treatment plan must:
 - a. Indicate review of the level of care assessment completed by the qualified individual, as well as other supporting documentation to assist in the development of a written treatment plan;
 - b. Be based on a thorough assessment of the situation and circumstances of the resident and the resident's ~~family~~[parent of guardian](#) strengths and needs;
 - c. Support timely achievement of permanency, including reunification, guardianship, or adoption, if in foster care;
 - d. Specify details, including the resident's:
 - (1) Strengths and needs;
 - (2) ~~Family's~~[Parent of guardian's](#) strengths and needs;
 - (3) Behavioral functioning;
 - (4) Psychological or emotional adjustment;
 - (5) Personal and social development;
 - (6) Medical needs;
 - (7) Medication management;
 - (8) Educational and vocational needs;
 - (9) Independent living and transition skills; and
 - (10) Recreational interests and normalcy activities;
 - e. Be time-limited, goal-oriented, and individualized to meet the specific needs of the resident as identified from the assessment, including:
 - (1) Implementation date;
 - (2) Goals and objectives that specify behaviors to be modified;

- (3) Projected achievement dates, with measurable indicators or criteria for monitoring progress and assessing achievement of treatment goals; and
 - (4) The name of the employee or community provider responsible for providing treatment required to the resident and the resident's ~~family~~parent or guardian;
- f. Include and document the involvement from the resident, parent or guardian, public custodial agency, courts, schools, informal social network, residential treatment team members, peer support, or any other individuals important to the resident;
 - g. Document the conditions for discharge and estimated discharge date; and
 - h. Be reviewed at least every thirty days by the treatment coordinator employee or designated facility clinician. Changes and modifications must be made and documented in writing to ensure appropriateness of the treatment goals.
2. Family treatment. The facility shall plan for how ~~family members are~~the parent or guardian is integrated into the treatment process, including postdischarge aftercare services, and how sibling connections are maintained throughout placement. ~~The family~~This section of the resident's treatment plan must include:
- a. Contact information and outreach services with family members, including siblings. The plan must detail how the resident may maintain contact for any known family and appropriate social supports of the resident;
 - b. Family-based support during placement;
 - c. Family-based support for at least six months postdischarge;
 - d. Document and provide evidence of the resident's and family's involvement during ongoing planning efforts;
 - e. Document ongoing outreach to and engagement with family members during resident's treatment. The facility shall maintain contact with the resident's custodian and parent or guardian at least weekly. Type of contact may be detailed and includes face-to-face, phone calls, and written communication;
 - f. Date and signature of the resident, employee, custodian, parent or guardian, and others, as applicable; and
 - g. Evidence of facility providing the treatment plan to the resident's custodian and parent or guardian.
3. Visitation plan. The facility shall detail in the resident's treatment plan the agreed upon visitation schedule for the resident from the custodian and parent or guardian. The plan shall identify approved visitors and opportunities for the resident to engage in home visits. A resident who engages in home visits shall have an active safety plan provided to the responsible party supervising the resident on a home visit.
4. Resident acknowledgment. The written treatment plan must include an indication of who must provide treatment coordination, and the residents' signature or the signed statement of the treatment coordinator employee that the treatment plan was explained to the resident and the resident refused to sign the treatment plan.
5. Electronic filing. If a facility engages in electronic data entry and case filing, the facility shall develop a policy to manage this process. The policy must include the electronic medical records process, procedures for internal network security, employee access, and management

of facility data, backup systems, and how the facility shall engage in electronic file sharing with the resident's custodian and parent or guardian.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-36. Discharge plan.

Each resident must have their discharge plan developed upon admission and reviewed ongoing as part of the treatment plan.

1. Persons involved in discharge planning should include:
 - a. Resident;
 - b. Resident's parent or guardian;
 - c. Custodian, if applicable;
 - d. Psychiatrist, if applicable;
 - e. Therapist, if applicable;
 - f. Clinical director;
 - g. Treatment coordinator employee;
 - h. Facility nurse;
 - i. Facility educator or community teacher;
 - j. Direct care employee;
 - k. Foster parentscare providers, if applicable;
 - l. Juvenile court, if applicable; and
 - m. Other individuals important to the resident and family.
2. The discharge plan must address the following:
 - a. The date of admission;
 - b. The anticipated date of discharge;
 - c. Details of the events and circumstances leading to the decision to discharge;
 - d. The name and address of the individual or agency to whom the resident must be discharged and the rationale for planning a discharge to that individual or agency;
 - e. A summary of services provided during placement;
 - f. A summary of goal achievement;
 - g. A summary of the resident's continuing needs, including health care, educational or vocational training, psychiatric, medical, psychological, social, behavioral, developmental, and chemical dependency treatment needs;

- h. Appointments scheduled, including individual therapy, psychiatric services, educational services, and other services or supports as needed;
 - i. Medication plan, including a seven-day supply of needed medication and a prescription for medication to last through the first outpatient visit with a prescribing provider;
 - j. A summary of community-based service needs for the resident and resident's family;
 - k. A summary of efforts made by the facility to prepare the resident and the resident's family for discharge; and
 - l. The facility's plan for the six months of aftercare services for the resident and the resident's family.
3. The discharge committee shall review and approve each anticipated discharge thirty days prior to the discharge and provide the completed discharge plan to the custodian at least seven days prior to the anticipated discharge. A discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, community service providers, and foster care provider, if applicable must take place at least seven days before discharge to review and sign the discharge plan to ensure the continuity of services consistent with the resident's treatment needs after discharge.
4. If a discharge is not anticipated at least thirty calendar days ahead of time, the discharge is considered unplanned and the facility shall:
- a. Hold a discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, and any other relevant parties. This meeting must allow relevant parties time to review the discharge plan and aftercare engagement strategies while discussing services needed to best meet the needs of the resident.
 - b. Create and provide in writing a finalized discharge and aftercare plan to the custodian and parent or guardian at least seven days prior to the resident's discharge.
 - c. Provide the discharge plan and aftercare plan no greater than seven days postdischarge, if an immediate discharge occurred.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-38. Aftercare.

The facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to best meet the needs of residents and families, including completion of an aftercare plan that identifies how the facility will ensure continuity of services provided to the resident and the resident's parent or guardian, postdischarge.

1. The aftercare plan must be created prior to discharge in collaboration with the resident and the resident's custodian, parent, or guardian and must include:

a. A list of followup appointments scheduled by the facility;

b. A list of resident and family supports;

c. A list of resources and referrals completed by the facility engagement specialist to meet the needs of the resident, which includes documentation that a release of information

was signed by the custodian, parent, or guardian for the family engagement specialist to maintain postdischarge communication regarding services;

d. Coordination with and contact information for local service providers;

e. A safety plan created to address treatment needs of the resident upon return to the community;

f. Documentation plan for engagement with the resident and the resident's custodian, parent, or guardian, service providers, and other relevant parties; and

g. Documented participation in child and family team meetings if the resident remains in foster care.

2. Aftercare policy applies to all residents accepted into the facility for treatment. If a resident is placed as an emergency placement and not approved for treatment, aftercare services are not required.

3. The aftercare six-month followup period must begin the day following the resident's discharge from the facility. The facility shall implement the aftercare plan developed as part of the discharge planning process. The facility may directly provide aftercare services and supports or coordinate with local service providers.

4. The facility shall conduct a department-approved postresidential outcomes survey at the conclusion of the six-month required aftercare period.

5. Postdischarge aftercare services must be provided by the facility as follows:

~~1.a.~~ If a resident discharged from the facility remains in foster care, the facility shall collaborate with the custodial agency to implement the six-month ~~postdischarge~~aftercare plan.

~~2.b.~~ If a resident is discharged and no longer in foster care, the facility shall coordinate the ongoing six-month aftercare with the resident and resident's ~~family. If the resident's family declines continued engagement with the facility, the facility is required to continue to attempt to maintain at least monthly contact with the family for a period of six months~~parent or guardian.

~~3.c.~~ If a resident is successfully discharged, but does require readmission to a facility, the aftercare services will discontinue and a new aftercare period will begin postdischarge from the current facility placement.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-40. Incident and sentinel event reporting.

The facility shall have written policy outlining the documentation of incidents and sentinel events that occur while the resident is in placement. Policy must include:

1. Description of an incident as an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, residents, or agency employees.

a. Incidents involving law enforcement, including in the case of a runaway, criminal activity, behavior resulting in harm to others, or restraint injury. An incident also may involve

issues, such as outbreak of a serious communicable disease, harassment, violence, and discrimination.

- b. Notification must be made to the custodian and parent or guardian immediately or no more than twelve hours.
2. Description of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury not related to the natural course of a resident's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.
 - a. Sentinel events include serious injury or trauma to a resident, attempted suicide by the resident, death of a resident, or inappropriate sexual contact.
 - b. Notification must be made to the custodian and parent or guardian, and the department immediately or no more than twelve hours.
3. Documentation of an incident or sentinel event must be completed and placed in the resident's record. The report must include:
 - a. Resident's name, age, and sex;
 - b. A description of the incident or event;
 - c. The date, time, and location of the incident or event;
 - d. The name of each ~~employee or nonemployee~~ personnel involved;
 - e. Methods used to address the resident's behavior, including duration of each intervention;
 - f. Detailed description of the technique or approach engaged with the resident at the time of the incident or event;
 - g. Results achieved from methods used to address resident behavior; and
 - h. Injuries received by either the resident or an employee in using physically enforced separation or restraint, how the injuries occurred, and any medical care provided.
4. The facility shall maintain a log of written reports of incidents involving residents.
5. Direct care employees must be given time at the beginning of each shift to be informed of or review incident reports occurring since their last shift.
6. ~~Employees, nonemployees,~~ Personnel and residents must be given time to debrief the incident with clinical ~~staff~~ personnel.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-41. Suicide prevention.

A facility shall develop a suicide prevention plan that addresses several key components, including:

1. ~~Employee and nonemployee~~ Personnel training;
2. Intake screening;
3. Ongoing risk assessments;

4. Levels of supervision for resident's;
5. Intervention options;
6. Use of suicide prevention kits with cut down tools;
7. Facility communication, notification, and referral procedures;
8. Reporting and documentation; and
9. Sentinel event debriefing procedures.

History: Effective October 1, 2019; [amended effective April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-42. Medical.

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care for residents, including first aid, dental, optical care, and administration of prescription and nonprescription medicine. If a resident is due for a medical examination, the facility shall arrange for a physical examination within seven days of admission and for a dental or optical examination, if needed, within ninety days of admission. The facility shall arrange and provide for necessary remedial and corrective measures for every resident as soon as possible after an examination indicates a need.
2. The facility shall have policies governing the use of psychotropic medications.
3. The facility shall have a plan to separate an ill resident from other residents only if necessary, because of the severity of the illness and it is contagious or infectious.
4. The facility shall have a policy to prevent transmission of infection from all blood or other body fluid exposures, and all ~~employees and nonemployees~~ [personnel](#) shall be aware of and follow policy related to universal precautions.
5. The facility shall have a first aid kit on each level of the building housing residents, in buildings where resident activities take place, and in every vehicle used to transport residents. The first aid kit must be placed where it is inaccessible to residents, but accessible to ~~employees and nonemployees~~ [personnel](#). A first aid kit must be inventoried and resupplied after each use.
6. The facility shall have a suicide prevention kit on each level of the building housing residents; including a cut down tool. The kit must be placed where it is inaccessible to residents, but accessible and readily available to ~~employees and nonemployees~~ [personnel](#). A kit must be inventoried and resupplied after each use.

History: Effective October 1, 2019; [amended effective April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-45. Emergency safety interventions.

The facility shall provide and administer emergency safety interventions as follows:

1. For purposes of this section:
 - a. "Drug used as a restraint" means any drug that:

- (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
 - (2) Has the temporary effect of restricting the resident's freedom of movement; and
 - (3) Is not a standard treatment for the resident's medical or psychiatric condition.
- b. "Emergency safety intervention" means the use of restraint as an immediate response to an emergency safety situation involving unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs.
 - c. "Emergency safety situation" means a situation where immediate risk of harm is present due to unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.
 - d. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident to calm or comfort him or her, or holding a resident's hand to safely escort a resident from one area to another, or a physical escort which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.
 - e. "Tier 2 mental health professional" has the same meaning as the term defined in subsection 9 of North Dakota Century Code section 25-01-01.
2. Education and training related to emergency safety interventions:
- a. Individuals who are qualified by education, training, and experience shall provide employee education and training.
 - b. Employees must be trained and demonstrate competency before participating in an emergency safety intervention.
 - c. The facility shall document in the employee personnel records that the training and demonstration of competency were successfully completed.
 - d. All training programs and materials used by the facility must be available for review by the accreditation body and the state agency.
 - e. The facility shall require employees to have ongoing education, training, and demonstrated knowledge and competency of all of the following, no less than semiannually:
 - (1) Techniques to identify employee and resident behaviors, events, and environmental factors that may trigger emergency safety situations;
 - (2) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;
 - (3) The safe use of restraint, including the ability to recognize and respond to signs of physical distress in residents who are restrained; and
 - (4) Training exercises in which employees successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

3. Emergency safety intervention:

- a. Facilities shall have a policy for the safe use of emergency safety interventions;
- b. Restraint may be used only when a resident poses an immediate threat of serious violence or serious injury to self or others and must be discontinued when the immediate threat is gone. ~~The use of seclusion by a facility is prohibited;~~
- c. Employees shall document all interventions attempted to de-escalate a resident before the use of a restraint;
- d. When restraint is deemed appropriate, personal restraint is allowed.;
- e. Mechanical restraints, prone restraints, and drugs or chemicals used as a restraint are prohibited;

f. The use of seclusion by the facility is prohibited;

e.g. Employee training requirements must include procedures:

- (1) For when restraint may and may not be used;
- (2) That safeguard the rights and dignity of the resident;
- (3) For obtaining informed consent, including the right of the custodian and parent or guardian of the resident to be notified of any use of restraint or any change in policy or procedure regarding use;
- (4) Regarding documentation requirements of each restraint episode and the use of such data in quality improvement activities; and
- (5) Regarding the debriefing of the resident and employees immediately after incidents of restraint; and

f. Quality management activities must examine the following:

- (1) Available data on the use of these practices and their outcomes, including the frequency of the use of restraint, settings, authorized employees, and programs;
- (2) The accuracy and consistency with which restraint data is collected, as well as the extent to which restraint data is being used to plan behavioral interventions and employee training;
- (3) Whether policies and procedures for using these practices are being implemented with fidelity;
- (4) Whether procedures continue to protect residents; and
- (5) Whether existing policies for restraint remain properly aligned with applicable state and federal laws.

4. ~~Restraint~~Personal restraint:

- a. Personal restraint is the only form of restraint allowed.
- b. If an emergency safety situation occurs and a personal restraint is determined necessary, the following actions are prohibited:

- (1) Any maneuver or techniques that do not give adequate attention and care to protection of the resident's head;
 - (2) Any maneuver that places pressure or weight on the resident's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression;
 - (3) Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the resident's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the resident's torso;
 - (4) Any type of choke hold;
 - (5) Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance; and
 - (6) Any technique that involves pushing on or into a resident's mouth, nose, or eyes, or covering the resident's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.
5. Authorization for the use of restraint:
- a. Authorization for restraint must be given by a tier 2 mental health professional and the tier 2 mental health professional must be trained in the use of the facility emergency safety interventions.
 - b. The authorization must indicate the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with the clinical director.
 - c. If the authorization for restraint is verbal, the verbal authorization must be received by a clinical team member, while the emergency safety intervention is being initiated by an employee or immediately after the emergency safety situation ends. The tier 2 mental health professional must verify the verbal authorization in a signed written form in the resident's record and be available to the resident's treatment team for consultation, in person or through electronic means, throughout the period of the emergency safety intervention.
 - d. Each authorization for restraint:
 - (1) Must be limited to no longer than the duration of the emergency safety situation;
 - (2) May not exceed the amount of time necessary to begin verbal de-escalation techniques with the resident; and
 - (3) Must be signed by the tier 2 mental health professional no later than twelve hours from initiation of a verbal authorization.
 - e. Within one hour of the initiation of a restraint, a face-to-face assessment of the physical and psychological well-being of the resident must be completed, documenting:
 - (1) The resident's physical and psychological status;
 - (2) The resident's behavior;
 - (3) The appropriateness of the intervention measures; and

- (4) Any complications resulting from the intervention.
 - f. Each authorization for restraint must include:
 - (1) The name of the tier 2 mental health professional;
 - (2) The date and time the authorization was obtained; and
 - (3) The emergency safety intervention authorized, including the length of time authorized.
 - g. An employee shall document the intervention in the resident's record. That documentation must be completed by the end of the shift in which the intervention occurs. If the intervention does not end during the shift in which it began, documentation must be completed during the shift in which it ends. Documentation must include all of the following:
 - (1) Each authorization for restraint as required in subdivision f;
 - (2) The time the emergency safety intervention began and ended;
 - (3) The time and results of the one-hour assessment required in subdivision e;
 - (4) The detailed emergency safety situation that required the restraint; and
 - (5) The name of each employee involved in the restraint intervention.
 - h. The facility must maintain a record of each emergency safety situation, the interventions used, and their outcomes.
 - i. If a tier 2 mental health professional authorizes the use of restraint, that **person**individual shall:
 - (1) Consult with the resident's prescribing physician as soon as possible and inform the resident's physician of the emergency safety situation that required the restraint; and
 - (2) Document in the resident's record the date and time the resident's prescribing physician was consulted.
6. Monitoring of the resident in and immediately after restraint:
- a. An on-call clinical team member trained in the use of emergency safety interventions shall be physically present, continually assessing and monitoring the physical and psychological well-being of the resident and the safe use of restraint throughout the duration of the emergency safety intervention.
 - b. If the emergency safety situation continues beyond the time limit of the authorization for the use of restraint, a nurse or other on-call clinical team member, immediately shall contact the tier 2 mental health professional, to receive further instructions.
 - c. Upon completion of the emergency safety intervention, the resident's well-being must be evaluated immediately after the restraint has ended.
7. Notification of custodian and parent or guardian:
- a. The facility shall notify the custodian and parent or guardian of the resident who has been restrained as soon as possible after the initiation of each emergency safety intervention.

- b. The facility shall document in the resident's record that the custodian and parent or guardian has been notified of the emergency safety intervention, including the date and time of notification and the name of the employee providing the notification.
8. Postintervention debriefings:
- a. Within twenty-four hours after the use of restraint, employees involved in an emergency safety intervention and the resident shall have a face-to-face discussion. This discussion must include all employees involved in the intervention except when the presence of a particular employee may jeopardize the well-being of the resident. Other employees and the custodian and parent or guardian may participate in the discussion when it is deemed appropriate by the facility. The facility shall conduct such discussion in a language understood by the custodian and parent or guardian. The discussion must provide all parties the opportunity to discuss the circumstances resulting in the use of restraint and strategies to be used by the facility, the resident, or others who could prevent the future use of restraint.
 - b. Within twenty-four hours after the use of restraint, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative leadership, shall conduct a debriefing session that includes, at a minimum, a review and discussion of:
 - (1) The emergency safety situation that required the emergency safety intervention, including a discussion of the precipitating factors that led up to the emergency safety intervention;
 - (2) Alternative techniques that might have prevented the use of the restraint;
 - (3) The procedures, if any, employees are to implement to prevent any recurrence of the use of restraint; and
 - (4) The outcome of the emergency safety intervention, including any injuries that may have resulted from the use of restraint.
 - c. An employee shall document in the resident's record that both debriefing sessions took place and shall include in that documentation the names of employees who were present for the debriefing, names of employees excused from the debriefing, and any changes to the resident's treatment plan that resulted from the debriefings.

History: Effective October 1, 2019; amended effective October 1, 2021; [April 1, 2024](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-47. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection and provide a copy to the department, including evidence of correction of noted deficiencies. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.

3. ~~There must be at least one~~A facility shall have a 2A 10BC fire extinguisher ~~on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height~~certified by Underwriters' Laboratories, maintained in accordance with the manufacturer's instructions, and located in areas defined in the fire code. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last ~~and the individual who performed the service~~completed.
4. The facility shall ~~provide the following smoke~~have smoke detectors:
 - ~~a. One unit for each bedroom hallway;~~
 - ~~b. One unit at the top of each interior stairway; and~~
 - ~~c. One unit for each room with a furnace or other heat source~~ installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code.
5. ~~Battery-operated smoke detectors must signal when the battery is exhausted or missing and be tested at least once a month.~~
- ~~6. Carbon~~If applicable, the facility shall have carbon monoxide detectors ~~must be operational as recommended by the local fire department or state fire marshal~~installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code.
- ~~6. The facility may install automatic sprinklers in bedrooms, hallways, and areas required by fire code. If an automatic sprinkler system is installed, it must be inspected annually and a copy of the inspection must be provided to the department.~~
7. The facility must be equipped with furnishings suitable to the needs of the residents. Recreational space and equipment must be safe, functional, and available for all residents.
8. The facility shall have one centrally located living room for the informal use of residents.
9. The facility shall have a dining room area large enough to accommodate the number of residents served.
10. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
11. A facility shall have bedroom accommodations for the residents as follows:
 - a. The facility shall have at least one bedroom for each three residents;
 - b. The facility may not permit nonambulatory residents to sleep above or below the ground floor;
 - c. There may be no more than one resident per bed, and triple bunks are prohibited;
 - d. All bedrooms must have at least one window that ~~opens~~can open to the outside. A facility may implement further restrictions such as a safety lock to the window, if it is determined to be a benefit for resident safety. If a lock is placed on a bedroom window, the facility must have an automatic sprinkler system and fire alarm system installed and notify the department in writing this additional safety measure has been implemented. Notification to the department must include policy surrounding the need and duration;

- e. A sleeping room may not be in an unfinished attic, hallway, or other room not normally used for sleeping purposes;
 - f. A basement that has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms, unless the bedroom space has egress windows;
 - g. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the residents; and
 - h. A facility shall have sufficient individual storage areas to accommodate resident's clothing and other personal belongings.
12. A facility shall have one complete bathroom to include a toilet, washbasin, and a tub or shower for each six residents and:
- a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean;
 - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment; and
 - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
13. Facilities shall ensure kitchen equipment and area meet the standards prescribed by the ~~state~~ department ~~of health~~ for food and beverage establishments. Compliance with these standards must be documented annually and inspection documentation must be provided to the department. A facility shall ensure:
- a. Food storage space is clean, and containers are covered and stored off the floor;
 - b. Dishes, cups, and drinking glasses used by the residents are free of chips, cracks, and other defects, and are sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher; and
 - c. Kitchen floors are reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.
14. Laundry facilities must be located in an area separate from areas occupied by residents. Space for sorting, drying, and ironing must be made available to residents who are capable of handling personal laundry.
15. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The facility shall obtain results from an environmental protection agency approved laboratory for testing through licensing with the department of environmental quality.
16. Alcohol, tobacco, and vaping is prohibited in the facility.
17. All toxic cleaning supplies, aerosols, chemical, agricultural and ground maintenance chemicals, pesticides, and other poisons must be stored in a locked cabinet.
18. All shampoos, body wash, hand sanitizers, and perfumes, must be distributed in a limited quantity ~~te~~ based on the individual needs of the resident. These items must be stored in a locked cabinet when not distributed to residents.

19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
21. All rooms in a facility must have adequate lights, heat, and ventilation. All bathrooms must have ~~a window which opens to the outside or exhaust~~ proper ventilation.
22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
 - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards;
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of residents;
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight;
 - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails;
 - e. Buildings must be free of unabated asbestos; and
 - f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
23. Any nonhousing buildings located on the facility property must be locked when not in use by ~~employees, nonemployees,~~ personnel or residents. Residents must be supervised by an employee when entering a nonhousing building.
24. All pet inoculations must comply with the local and state requirements.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-48. Food and nutrition.

1. The facility shall appoint an employee to be responsible for complying with requirements for healthy and safe food and nutrition practices.
2. All food service personnel shall have in-service training annually. Training topics must relate to proper food handling procedures, maintenance of sanitary conditions, and food service arrangements. Documentation of annual training must be kept in the employee's file.
3. Food must be in wholesome condition, free from spoilage, ~~filth,~~ or contamination and must be safe for human consumption. ~~Food in damaged containers or with expired freshness dating is not considered safe for human consumption.~~
4. The facility shall ensure the nutritional requirements of the residents are met. The facility shall serve nutritionally balanced meals each day. Medically required special diets must be prepared for residents as needed.

5. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.

6. ~~No home-canned foods may be served.~~

~~7.~~ Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the ~~state department of health~~ for food and beverage establishments.

~~8.7.~~ The facility shall provide refrigeration for perishable food and shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.

~~9.8.~~ ~~Employees, nonemployees,~~ Personnel and residents helping to prepare food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-50. Transportation.

This section applies to the transportation of residents in a facility-owned or leased vehicle, driven by ~~an employee or nonemployee~~ personnel. A facility shall develop a comprehensive transportation policy addressing the following:

1. Driver information. A facility shall maintain a list of approved ~~employee and nonemployee~~ personnel drivers. The list must indicate the name of each driver, type of license held, and the date of expiration of the license. The list must be on file at the facility.

2. Driver qualifications. ~~a. The driver must~~

All drivers shall hold a current valid operator's license for the type of vehicle being driven, be at least twenty-one years of age, and have at least one year of experience as a licensed driver;

~~b. Before a driver may transport residents, the facility shall obtain a copy of their driver's license. A copy of a valid driver's license must remain in the employee or nonemployee file; and~~

~~c. Before a driver may transport residents, the~~ The facility ~~initially~~ shall complete an initial check of the driver's driving record for any driving safety violations. ~~A copy of the employee's or nonemployee's driving record must be obtained annually and placed in the employee's or nonemployee's file. The facility shall develop policy to address safety-related driving violations and the ability to transport residents upon hire and annually thereafter.~~

3. Vehicle capacity and supervision.

a. A facility shall meet employee-to-resident ratios; and

b. A facility shall determine if additional supervision is required to minimize risk while transporting, based on the resident's needs.

4. Vehicle operation. Any vehicle used by a facility for the transportation of residents must:

a. Be maintained and inspected on a monthly basis, with records of inspections maintained at the facility;

- b. Be registered and licensed in accordance with North Dakota law and carry vehicle liability insurance;
 - c. Have a first aid kit stored inside the vehicle;
 - d. Have a log to track date and time of the transport, who was driving, and the residents in the vehicle. The log book also must list emergency contact information for community first responders and facility administration to notify in case of an accident;
 - e. Have operating seat belts for the use of all occupants on each transport;
 - f. Prohibit smoking, tobacco use, and vaping; and
 - g. Prohibit the use of a cell phone while operating the vehicle.
5. Accident report. A facility shall implement a policy for ~~employees and nonemployees~~personnel to follow when operating a facility vehicle impacted by a motor vehicle accident. In addition, the facility shall keep on file a copy of the official police report of any accident involving a facility vehicle transporting residents.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

CHAPTER 75-03-41 SUPERVISED INDEPENDENT LIVING

Section

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75-03-41-01. Definitions.

As used in this chapter:

1. "Agency" means the public or private entity licensed by the department to provide supervised independent living programming to eligible clients.
2. "Client" means an eligible individual between the ages of eighteen and ~~twenty-four~~twenty-one years and in foster care or eligible to return to foster care.
3. "Continued foster care services" is a voluntary foster care program to allow a ~~foster~~-child in foster care to remain in or return to foster care between the ages of eighteen and twenty-one while in the placement and care of a public agency, but not in public custody.
4. "Employee" means an individual compensated by the agency to work in a part-time, full-time, intermittent, or seasonal capacity for the agency. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
5. "Licensee" means an agency either licensed by the department or approved by the department if the agency is located within a tribal jurisdiction.

6. "Nonemployee" means an individual who is not compensated by the agency, such as a volunteer or student intern providing a specific service under the supervision of an employee.
7. "Placement and care agency" means a public agency granted legal placement and care authority.
8. "Supervised independent living program" means a program offered by an agency providing services and supports to eligible clients transitioning to independence.
9. "Supervised independent living setting" means a specific setting certified in accordance with the standards set forth by the agency to operate a supervised independent living program.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-00.1

75-03-41-02. Application - Effect of license.

1. ~~Application~~An application may not be approved for a supervised independent living program license ~~must be made on an application provided by~~until the department has reviewed the need for additional supervised independent living programs. To enable the department to determine the need for a new supervised independent living program, the applicant shall submit an initial application, including the following documentation and information to the department:
 - a. The number, gender, and age range of the residents to be served;
 - b. The employee staffing, including a list of full-time and part-time positions by job titles and descriptions;
 - c. A description of the proposed program;
 - d. A proposed budget; and
 - e. The geographic location of the supervised independent living program.
2. ~~At the initial application, the applicant shall submit a written purpose and policy statement for the general operation and management of the supervised independent living program. The information submitted to the department for consideration must include:~~
 - ~~a. The purpose of the supervised independent living program;~~
 - ~~b. The geographic area the applicant expects to serve;~~
 - ~~c. The ages of eligible clients to be served;~~
 - ~~d. Written placement policy and agreement forms; and~~
 - ~~e. Written statement of the fees associated with the service.~~Upon receipt of initial application, the department shall:
 - a. Review the detailed plan for the operation proposed by the applicant;
 - b. Ask for additional materials or information necessary for evaluation of need;
 - c. Respond in writing within thirty days of receipt of all required information from the applicant; and

- d. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is no need for additional supervised independent living programs, the department may deny the initial application. If the department determines there is need for additional supervised independent living programs, the notice must be accompanied by an authorization for the applicant to move forward with the application process for a license to operate a supervised independent living program.
3. ~~Upon receipt of the~~ If an applicant receives authorization to apply for a license to operate a supervised independent living program, an application for licensure or renewal of license, must be submitted in the form and manner prescribed by the department ~~shall conduct a licensing study or a license review to determine if the applicant meets all applicable requirements for licensure, which will initiate a document-based review or onsite visit at least every two years.~~
4. After completion of a licensing study ~~or license review~~, the department shall issue a license to any applicant that meets all requirements for licensure to provide a supervised independent living program.
5. Each agency shall carry general comprehensive liability insurance.
6. The department shall renew the license on the expiration date of the previous license if:
- The agency makes written application for renewal prior to the expiration date of its current license; and
 - The agency continues to meet all requirements for licensure at the time of the licensing study or license review.
7. If the department determines an application, renewal of license, or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.
8. A supervised independent living program license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only to the agency providing the program oversight for the number of clients indicated on the license.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, ~~50-11~~50-11-03

75-03-41-06. Governance and administration.

- The agency shall have a governing body that is responsible for the policies, activities, practice, and overall operations of the agency. The governing body shall:
 - Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member shall annually disclose conflicts of interest. Members of the board may not be family or have conflicts of interest with agency administration or employees with budget or accounting duties;
 - Meet at least every six months;
 - Maintain records of the governing body's meetings;

- d. Develop and review policies for member selection and rotation;
- e. Ensure each board member understands the agency operation and program goals;
- f. Ensure the agency is funded, housed, staffed, and equipped in a manner required for the provision of services;
- g. Approve the agency's annual budget of anticipated income and expenditures necessary to provide services described in the program's statement of purpose;
- h. Provide financial statements and audits to the department for reimbursement purposes, upon request;
- i. Ensure the agency has an active strategic plan with a schedule to review annually;
- j. Adopt a written statement of the purpose and philosophy of the agency; ~~and~~
- k. Adopt written policies for the agency regarding administration, personnel, and program services. Personnel policies for the recruitment and retention of employees necessary to operate the agency must indicate expectations of employees and nonemployees, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every five years; and
- l. Ensure developed policies for agency operations are in compliance with law, administrative rules, and policy as defined by the department.

2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into agency practice. The agency policy must be up to date.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-07. Financial structure.

1. For purposes of initial licensure, the applicant shall demonstrate the applicant has sufficient income to operate the applicant's program of services and, upon relicensure, the agency shall demonstrate ongoing financial stability.
2. The agency shall prepare an annual budget based on the assessment of agency program priorities and appraisal of anticipated funding, including reimbursement for services. The agency shall submit a copy of its budget to the department with a cost breakdown of budget items utilized to determine fees for services.
3. The agency shall maintain liability insurance as protection for its governing body, ~~staff~~employees, nonemployees, clients, funds, and property. The agency shall review the liability insurance annually to assure adequate agency coverage.
4. The supervised independent living program ratesetting must be negotiated with the department for clients who meet the continued foster care services criteria. Ratesetting may include the review of program costs and client outcomes.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-09. Confidentiality.

1. Except as otherwise provided in this section, agency records concerning clients that have received, are receiving, or seek to receive supervised independent living programming must be safeguarded. The agency shall ensure the safety of client records against loss, theft, defacement, tampering, or use by unauthorized persons. Any documents containing identifying information regarding the client must be locked when unattended by staff, an employee or nonemployee.
2. The agency may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any client or member of the client's family without first securing the written consent of the appropriate parties.
3. Client consent is not required to release confidential information if situations where the safety of the client or other individuals are at risk, child abuse or neglect is suspected.
4. The agency shall have policy in place to ensure all clients served have a responsibility for keeping confidentiality of other clients in the program. This includes not confirming or denying another client's participation in the program to outside persons or agencies via telephone, face-to-face, social media, electronic communications, or written requests.
5. The agency shall have written policies regarding retention of client records and supervised independent living program personnel files.
6. The agency shall disclose its records to the department as requested.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-05

75-03-41-10. Quality assurance.

A supervised independent living program shall have a performance and quality improvementassurance plan that advances efficient, effective service delivery, management practices, and the achievement of goals and outcomes.

~~1. An agency shall have a written quality assurance plan that defines:~~

~~—— a. Approach to quality improvement;~~

~~—— b. Employee roles and responsibility for implementing and coordinating quality assurance;~~

~~—— c. Data outcomes tracked and collection processes; and~~

~~—— d. Processes for reporting findings and monitoring results.~~

~~2. An agency quality assurance plan must include agency performance and client outcomes which identify measures of the following client outcomes:~~

a. Employment;

b. Education;

c. Permanent connections;

d. Health insurance coverage;

e. Reduction of illegal or high-risk behaviors;

- f. Reduction of unplanned parenting; and
- g. Reduction of homelessness.

~~3.2.~~ The agency shall conduct ~~a department-approved~~an outcomes survey for each client upon entry; ~~and exit;~~ ~~and six months following exit~~ from the supervised independent living program.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-11. Employee qualifications.

1. The agency shall employ supervised independent living program ~~staff~~employees with sufficient qualifications to enable the supervised independent living program ~~staff~~employees to perform the agency's fiscal, clerical, and maintenance functions associated with operating the program.
2. The supervised independent living program shall comply with the following minimum employee-to-client ratio requirements:
 - a. No fewer than one part-time program administrator for a supervised independent living program serving less than thirty clients or a full-time program administrator for a program serving thirty or more clients; and
 - b. No fewer than one supervised independent living program transition coordinator for each fifteen clients.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-12. Program administrator.

The agency shall designate a program administrator to oversee the agency's supervised independent living program.

1. The agency clearly shall define, in writing, the responsibilities of the program administrator. At a minimum, the program administrator's responsibilities shall include:
 - a. Planning and coordinating the development of policies and procedures governing the supervised independent living program;
 - b. Ensuring the governing body is kept informed of matters affecting the supervised independent living program's finances, operation, and provision of services;
 - c. Ensuring employment of qualified staff and the administration of the supervised independent living program's employee and nonemployee policies;
 - d. Ensuring the supervised independent living program and its services are made known to the community;
 - e. Maintaining the policies and procedures required by this chapter in written form;
 - f. Maintaining a current organizational chart representing program authority; and
 - g. Supervising, evaluating, and monitoring the work progress of the program ~~staff~~employees and nonemployees.

2. The program administrator must have a bachelor's degree in business, public administration, or a behavioral science field and have four years of related work experience.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-13. Transition coordinator.

1. The agency clearly shall define, in writing, the responsibilities of the supervised independent living program transition coordinator. At a minimum, responsibilities must include:
 - a. Performance of intake services;
 - b. Provide client case management and coordination of services;
 - c. Referral of resources to assist clients;
 - d. Overall management of the client's transition plan;
 - e. Documentation of ongoing communications and case activity for each client;
 - f. Competencies necessary to implement an individualized transition care plan for each client; and
 - g. Competencies to provide group services, if applicable to the program.
2. The transition coordinator must have a bachelor's degree in ~~social work or related human service~~ a behavioral science field, and be licensed as required by the field of practice, and have two years previous paid or unpaid work experience with children or families, unless otherwise approved by the department.
3. The agency shall have sufficient transition coordinators employed to meet minimum employee-to-client ratios required by this chapter.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-17. Background checks effect on operation of agency or employment.

Repealed effective April 1, 2024.

- ~~1. The agency shall require an initial fingerprint-based criminal background check for each employee and nonemployee with direct contact with clients. Subsequent background checks are not required for an employee who maintains continuous employment at the agency unless the agency or the department determines a need exists to conduct a subsequent investigation.~~
- ~~2. The agency shall require an initial child abuse and neglect index check review including index check review in each state where the employee or nonemployee has resided in the past five years. After the initial investigation, a child abuse and neglect index check review must be repeated annually for each employee and nonemployee with direct contact with clients.~~
- ~~3. The agency shall submit proper paperwork for the department to perform an annual child abuse and neglect index check review on every agency employee and nonemployee. The agency shall place a copy of the results in each employee or nonemployee personnel file.~~

- ~~4. The agency shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. The agency shall define in policy parameters specific to duties allowed while awaiting the results of the required background check.~~
- ~~5. The department may excuse an employee or nonemployee from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an employee or nonemployee is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the employee or nonemployee lived during the eleven years preceding the signed authorization for the background check.~~

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-06.8

75-03-41-18. ~~Criminal convictions~~Background checks and criminal conviction - Effect on operation of agency or employment by agency.

1. The department requires an initial fingerprint-based criminal background check for each employee or nonemployee with direct contact with clients. Subsequent fingerprint-based background checks are not required for an employee who maintains continuous employment at the supervised independent living program unless the program or the department determines a need exists to conduct a subsequent investigation. Subsequent fingerprint-based background checks for nonemployees are not required unless the program or department determines a need exists to conduct a subsequent investigation.
2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index check must be completed and placed in the personnel file.
3. An agency may not employ an employee or place a nonemployee, in any capacity that involves or permits contact between an employee or nonemployee and any client provided supervised independent living programming by the agency, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; ~~12.1-20-12.3, sexual extortion;~~ 12.1-22-01, robbery; if a class A or B felony under section 2 of that section or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

- c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
- (1) The department will not consider a claim ~~that~~ the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction~~, for all other criminal convictions has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

~~2-4.~~ The department has determined the offenses enumerated in subdivisions a and b of subsection ~~4~~3 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of supervised independent living programs and services.

~~3-5.~~ In the case of ~~a misdemeanor simple assault~~ offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; or 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C, felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent charge or conviction~~ for all other criminal convictions. The department may not be compelled to make such determination.

~~4-6.~~ The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

~~5-7.~~ An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

- a. Common knowledge in the community verified by source documents;
- b. Acknowledged by the individual; or
- c. Discovered by the agency or department as a result of a background check.

~~6-8.~~ The department may request a fingerprint-based criminal background check whenever an employee or nonemployee of the agency is known to have been involved in, charged with, or convicted of an offense.

9. The department may review fingerprint-based criminal background check results as follows:

- a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel.

- c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
- e. The final decision of the review panel may not be appealed.

10. The supervised independent living program shall make an offer of employment to an employee conditioned upon the individual's consent to complete a required background check. While awaiting the results of the required background check, the supervised independent living program may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee is limited to supervised interaction with clients.

11. The department may excuse an employee or nonemployee from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an employee or nonemployee is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the employee or nonemployee lived during the eleven years preceding the signed authorization for the background check.

12. An agency shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

~~7-13~~ An agency shall establish written policies specific to how the agency shall proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-06.8

75-03-41-20. Supervised independent living setting.

1. An agency licensed to provide supervised independent living programming may engage in service delivery based on different housing options, referenced as a supervised independent living setting. The agency is not required to offer each setting and shall specify during application and in policy which setting the agency shall provide. The agency shall have defined criteria and policy specific to clients eligible for each setting. The agency may own, lease, or contract with another person to provide a setting. Setting may include:
 - a. Individual apartment: an individual suite or shared apartment unit located within a building ~~servicing~~ housing one or multiple ~~clients~~ individuals, each with ~~a private~~ adequate bedroom and ~~a private or shared~~ space, living space, and kitchen facilities ~~designed as a residence~~. This setting may include onsite program management.
 - b. Shared housing: a single-family residence serving clients living cooperatively as an unrelated family in a house each with a private bedroom. If a client has a child of their own, the shared housing accommodations must meet the needs of all individuals residing in the home. This setting may include onsite program management.
 - c. College dorm room: a room in a building provided by a college or university containing several private or semiprivate bedrooms for housing a number of individuals in a setting

whose inhabitants are in school. This includes dorms on- or off-campus and may include onsite program management.

2. A supervised independent living setting is not required to be licensed in addition to the agency license to provide supervised independent living programming.
3. A supervised independent living setting must be in compliance with all applicable provisions of state and local laws, ordinances, rules, and regulations concerning health, safety, and nondiscrimination for housing. A supervised independent living setting must be:
 - a. ~~Located~~Be located in ~~an appropriate neighborhood and so located that it is readily~~ a safe area accessible to necessary services and adequate transportation;
 - b. ~~Of sufficient size to provide~~Provide proper accommodations for the client; and
 - c. ~~Kept~~Be maintained in clean and sanitary condition ~~and in good repair~~ providing reasonable comfort and well-being of the client.
4. Only clients accepted into the supervised independent living program may reside in a supervised independent living program setting, unless otherwise approved by the placement and care agency.
5. Supervised independent living programs provided to pregnant or parenting clients and client's children shall also meet the following criteria:
 - a. The setting shall provide safe and adequate sleeping arrangements for the children;
 - b. The client's transition plan must include appropriate parent education, including certified first aid, certified cardiopulmonary resuscitation, and child care; and
 - c. The program policy for pregnant or parenting clients must be followed.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-21. Client eligibility.

The supervised independent living program may be made available for a variety of clients in need of transition services. The agency shall detail in policy, clients eligible for program acceptance and the expectations of a client's ability to live independently with minimal supervision. Clients eligible for acceptance into the program ~~may~~ include:

1. Clients currently under the custody of a public agency; or
2. Clients currently in the placement and care of a public agency, actively participating in continued foster care services; and
- ~~2. Clients pregnant or parenting a child; or~~
3. Clients in need of supervised independent living programming.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-25. Client rights.

Repealed effective April 1, 2024.

~~— The agency shall have written policy indicating the agency supports the rights of clients. Specifically, the agency shall:~~

- ~~1. Respect the client;~~
- ~~2. Ensure the client is treated fairly and without discrimination;~~
- ~~3. Respect the client's family members or adult connections;~~
- ~~4. Provide safe housing;~~
- ~~5. Allow the client to take their personal items, clothing, and any gifts or possessions that have been acquired when exiting the program;~~
- ~~6. Provide referrals for the client to receive medical, vision, and dental care;~~
- ~~7. Support cultural traditions and religious faith in reasonable ways;~~
- ~~8. Support the client in participating in the development of their transition plan;~~
- ~~9. Support the client in attending and leading their quarterly foster care child and family team meeting, if applicable;~~
- ~~10. Support the participation and representation in the client's foster care judicial proceedings, if applicable; and~~
- ~~11. Outline a process that can be utilized by the client if the client feels their rights are not being protected.~~

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-26. Client file.

Upon acceptance to the supervised independent living program, a client's case file is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The agency shall adopt a policy regarding the retention of client files.

1. The client file must include:
 - a. A file inventory with dates of acceptance into the program, referral agency, and emergency contact information;
 - b. The client's full name, date of birth, and other identifying information;
 - c. A photo of the client;
 - d. Signed care program acceptance agreement, including financial responsibility and expectations of all parties. The agreement must indicate a clear division of responsibility between the agency, client, and the placement and care agency, if applicable;
 - e. ~~If the client is in continued foster care services,~~ a ^A current court order establishing the authority granted to the placement and care agency;
 - f. ~~If the client is in continued foster care services,~~ a ^A copy of the continued foster care agreement signed by all parties;
 - g. A copy of the outcomes survey;

- h. A copy of the transition plan prepared by the agency and client;
- i. Transition plan progress reports, no less than quarterly;
- j. Ongoing documentation and case activity logs of face-to-face contact, electronic mails, and texts with clients; ~~and~~
- k. All incident or sentinel event reports involving the client; and
- l. A copy of client rights.

2. The agency shall designate an employee to review each client file at least quarterly. Documentation of the file review must be included in the client file.

3. An agency shall disclose its records to the department as requested.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-05

CHAPTER 75-09.1-11

75-09.1-11-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "ASAM criteria" means the current edition of the criteria of the American society of addiction medicine.
2. "Certified peer support specialist" means a ~~person~~ human being meeting the requirements of certified peer support specialist I or certified peer support specialist II in compliance with chapter 75-03-43.
3. "Comprehensive biopsychosocial clinical assessment" means an assessment that integrates information regarding the biological, psychological, and social factors of an individual's life in determining the nature of the individual's substance use disorder and criteria for treatment.
4. "Department" means the North Dakota department of health and human services.
5. "Individual" means an individual who meets the identified eligibility criteria for services under the substance use disorder treatment voucher system.
6. "Outcomes measures" means the events or conditions that indicate the effectiveness of the substance use disorder treatment services.
7. "Process measures" means the steps and actions taken to implement the substance use disorder treatment services.
8. "Program" means an individual, partnership, association, corporation, or limited liability company that establishes, conducts, or maintains a substance abuse treatment program license in compliance with chapter 75-09.1-01 or similar license from a bordering state for the care of individuals with a substance use disorder. "Program" does not include a DUI seminar, which is governed by chapter 75-09.1-09 or a substance abuse treatment program operated by a state agency.
9. "Voucher" means funding issued by the department to a licensed substance abuse treatment program, excluding human service centers and the state hospital, for the purpose of providing eligible individuals substance use disorder treatment and recovery services.

History: Effective July 1, 2016; amended effective April 1, 2020; July 1, 2022; April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-42

75-09.1-11-07. Individual eligibility for a substance use disorder treatment voucher.

1. The individual completes a voucher application in the form and manner prescribed by the department;
2. The individual resides in North Dakota;
3. The individual is ~~fourteen~~ twelve years of age or older;
4. The individual grants the department access to treatment and payment records consistent with the confidentiality requirements found under title 42, Code of Federal Regulations, part 2 and title 45, Code of Federal Regulations, part 164;
5. The individual does not have resources to cover any care for treatment ~~and~~ meets one of the following conditions:

- a. Individual's third-party payment resources will not cover all costs for treatment;
 - b. Individual has a pending application for medical assistance which presents a barrier to timely access to treatment; or
 - c. Individual ~~does~~would not qualify for medical assistance and has no alternative third-party payment resources.
6. The individual has an annual income no greater than two hundred percent of federal poverty guidelines.

History: Effective July 1, 2016; amended effective April 1, 2020; July 1, 2022; April 1, 2024.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-42

TITLE 82
BOARD OF TRUSTEES OF THE TEACHERS' FUND FOR RETIREMENT

APRIL 2024

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~~sent to the ~~executive director~~:address listed on the funds website at www.rio.nd.gov.

~~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; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC ~~28-32-02.1~~15-39.1-05.2, 54-52.5-02

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. "Acceptance of benefit" means the benefit payment date that is the first calendar day of each month for benefits paid by paper check or electronic funds transfer to a financial institution.
2. "Account balance" or "value of account" means the member's accumulated contributions or assessments, plus the sum of any member purchase or repurchase payments, plus interest at an annual rate of six percent compounded monthly.
3. "Administrative" means to manage, direct, or superintend a program, service, or school district or other participating employer.
4. "Benefit payment date" means the date the member is paid a benefit which is the first day of the month. Benefits may be paid retroactive to a member's retirement date.
5. "Benefit service credit" means employment service used to determine benefits payable under the fund.
6. "Bonus" means an amount paid to a member in addition to regular contract salary which does not increase the member's base rate of pay, is not expected to recur or continue in future fiscal years, or is not expected to be a permanent salary increase. A bonus is not considered eligible retirement salary and is not subject to payment of member and employer contributions.

Bonuses include the following:

- a. Recruitment or contract signing payments defined in North Dakota Century Code section 15.1-09-33.1.
 - b. Retention, experience, or service-related payments.
 - c. Early retirement incentive payments, severance payments, or other payments conditioned on or made in anticipation of a member's retirement or termination.
 - d. Payments made to recognize or reward a member's accomplishments or service.
 - e. Other special or irregular payments which the board determines to be bonuses using criteria and documentation described in section 82-04-02-01.
7. "Cessation of employment" means severance or termination of employment.
 8. "Contributions" means the assessments or payments made to the fund.
 9. "Covered employment" means employment as a teacher in a North Dakota state agency, state institution, school district, special education unit, regional education association, or other governing body of a school district.
 10. "Covered payroll" means all amounts included in payroll, salary, or compensation paid to active members on which contributions to and benefits from the pension plan are based according to the definition of salary in subsection 10 of North Dakota Century Code section 15-39.1-04. Covered payroll may also be referred to as pensionable or eligible payroll, salary, compensation, or earnings.

11. "Dual member" is a member who is also a member of an alternative plan as defined in North Dakota Century Code section 15-39.1-10.3.
12. "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.
- ~~12.~~13. "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.
- ~~13.~~14. "Member" is a teacher as defined in North Dakota Century Code section 15-39.1-04 who is a participant in the fund.
- ~~14.~~15. "Participating employer" means the employer of a teacher, including a North Dakota state agency, state institution, school district, special education unit, area career and technology center, regional education association, or other governing body of a school district who contributes to the teachers' fund for retirement.
- ~~15.~~16. "Performance or merit pay" means an amount paid to a member pursuant to a written compensation plan or policy that links a member's compensation to attainment of specific performance goals and duties. The specific goals, duties, and performance measures under which performance pay is expected to be made must be determined in advance of the performance period and documented in writing. Performance or merit pay may be in addition to regular salary or may replace regular salary increases. Performance or merit pay is considered eligible retirement salary and subject to payment of member and employer contributions, unless the teachers' fund for retirement board determines the payments are ineligible salary using criteria and documentation described in section 82-04-02-01.
- ~~16.~~17. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent year.
- ~~17.~~18. "Referee" means all sporting and nonsporting event judges and officials, including referees, umpires, line judges, scorekeepers, timekeepers, ticket takers, ushers, and other judges or officials.
- ~~18.~~19. "Retirement date" means the date selected by the member to begin retirement benefits. The benefit is calculated as of the retirement date and can be no earlier than the first ~~or fifteenth~~ day of the month following eligibility for retirement benefits or the first day of the month following eligibility for disability or death benefits. Notwithstanding the foregoing a member's retirement will not be effective until the member accepts the first benefit payment.
- ~~19.~~20. "Salary reduction or salary deferral amounts under 26 U.S.C. section 125, 132(f), 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. Employer contributions to plans specified in 26 U.S.C. section 125, 132(f), 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.
- ~~20.~~21. "Special teachers" include licensed special education teachers, guidance and school counselors, speech and language pathologists, social workers, school psychologists, librarians, media specialists, technology coordinators, program coordinators, and other 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.

- | ~~21.22.~~ 22. "Supervisory" means to have general oversight or authority over students or teachers, or both, of a school district or other participating employer.
- | ~~22.23.~~ 23. "Teaching" means to impart knowledge or skills to students or teachers, or both, by means of oral or written lessons, instructions, and information.
- | ~~23.24.~~ 24. "Vested" means the status attained by a teacher when the teacher has earned three years of service credit for a tier one member or five years of service credit for a tier two member for covered employment in this state.
- | ~~24.25.~~ 25. "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; May 1, 2004; July 1, 2008; July 1, 2012; April 1, 2016; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1

CHAPTER 82-03-01 MEMBERSHIP IN THE FUND

Section

82-03-01-01	Teachers' Withdrawal From Fund - Refund
82-03-01-02	Nonvested Teachers' Withdrawal From Fund - Refund [Repealed]
82-03-01-03	Termination of Participation
82-03-01-04	Repurchase of Forfeited Service Credit
82-03-01-05	Purchase of Benefit Service Credit
82-03-01-06	Veterans' Rights
82-03-01-07	Nonrecognition of Waived Service Credit
82-03-01-08	Dual Membership - Receipt of Retirement Benefits While Contributing to the Public Employees Retirement System or the Highway Patrolmen's Retirement System
82-03-01-09	Employer Service Purchase
<u>82-03-01-10</u>	<u>Veteran's Exemption - Proof of Qualified Military Retirement</u>

82-03-01-01. Teachers' withdrawal from fund - Refund.

When a teacher 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 the first day of the month following the expiration of one hundred twenty calendar days 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~~provider 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; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-20

82-03-01-04. Repurchase of forfeited service credit.

An individual who has forfeited service credit under section 82-03-01-03 may repurchase such service upon returning to teach or becoming an active dual member in accordance with the following:

1. An active teacher may immediately repurchase forfeited service credit upon returning to TFFR-covered employment. ~~If the repurchase payment is made within five years of returning to teach, the repurchase cost must be the amount withdrawn plus interest.~~
2. ~~An active~~A dual member ~~of the public employees retirement system or the highway patrol retirement system~~ may repurchase withdrawn service credit from the fund. ~~If the repurchase is~~

~~made within five years from the date of initial eligibility or July 1, 1987, the repurchase cost must be the amount withdrawn plus interest.~~

3. ~~If the repurchase payment is not made within five years, the~~The cost of the ~~remaining~~repurchased service credit will be calculated on an actuarial equivalent basis.
4. 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 based on the actuarially assumed investment return rate in effect at the time the member signs the installment agreement.
5. If a teacher retires prior to full payment of the repurchase 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.
6. If a teacher passes away prior to full payment of the repurchase 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; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10.3, 15-39.1-15, 15-39.1-24

82-03-01-10. Veteran's exemption - Proof of qualified military retirement.

A teacher applying for an exemption to membership in the teachers' fund for retirement for retired military personnel shall provide proof of at least twenty years of service in any branch of the armed forces of the United States on full-time active duty and proof of retirement with full military retirement benefits. The following documents are accepted as proof of service and proof of military retirement benefits: military record of service, commonly referred to as OD214.

History: Effective April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-19.3

CHAPTER 82-05-01

82-05-01-01. Application for benefits.

A member 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 member 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 member or beneficiary except as allowed under [section sections 82-05-01-03 and 82-05-02-02](#). If the member dies before accepting the first benefit payment, the member's beneficiary is eligible for death benefits the first day of the month following the member's death.

Retirement benefits may not be issued to a member 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; July 1, 2012; [April 1, 2024](#).

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10, 15-39.1-17

CHAPTER 82-05-02 FORMS OF BENEFIT PAYMENTS

Section	
82-05-02-01	Standard Form of Benefit Payments
82-05-02-02	Optional Forms of Benefit Payments
82-05-02-03	Level Income Option [Repealed]
82-05-02-04	Retroactive Retirement Eligibility
82-05-02-05	Partial Lump Sum Distribution Option

82-05-02-03. Level income option.

[Repealed effective April 1, 2024.](#)

~~— A teacher who retires prior to social security 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 82-05-03 PAYMENT OF BENEFITS

Section

82-05-03-01	When Benefit Payments Begin - Direct Deposit
82-05-03-02	Death Benefits - Proof of Death
82-05-03-03	Overpayment of Retirement Benefits - Write-Offs
<u>82-05-03-04</u>	<u>Interest Payments - Interest Accrual on Account - Preretirement Death</u>
<u>82-05-03-05</u>	<u>Erroneous Payment of Benefits - Overpayments</u>
<u>82-05-03-06</u>	<u>Erroneous Payment of Benefits - Underpayments</u>
<u>82-05-03-07</u>	<u>Erroneous Payment of Benefits - Appeals</u>

82-05-03-01. When benefit payments begin - Direct deposit.

If the teacher terminates covered employment ~~or~~and becomes eligible for retirement benefits ~~within the first fifteen days of the month~~, retirement benefits are paid ~~beginning on~~ the ~~fifteenth~~first day of the month following the official date of retirement. If a teacher terminates covered employment or becomes eligible for retirement benefits after the first fifteen days of the month, retirement benefits are paid beginning the first day of the following month.

Annuity payments will be directly deposited to a teacher's account in a bank, credit union, savings and loan, or other financial institution provided that the financial institution is an automated clearing house (ACH) financial participant. The teacher must complete the official direct deposit form provided by the fund.

History: Effective September 1, 1990; amended effective May 1, 1998; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10

82-05-03-03. Overpayment of retirement benefits - Write-offs.

All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment of retirement benefits is estimated to exceed the overpayment, the teachers' fund for retirement ~~board~~ may consider the repayment to be unrecoverable and written off.

History: Effective April 1, 2016; amended effective April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-29, 15-39.1-31

82-05-03-04. Interest payments - Interest accrual on account - Preretirement death.

The preretirement death benefit paid to any beneficiary must be equal to the account value included accumulated interest up to the date of death. No interest may continue to accrue to the account beyond the time of death of the member.

History: Effective April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

82-05-03-05. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the teachers' fund for retirement that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.

2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded.
3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay simple interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings, from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest and, if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the benefit payment period.
5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the teachers' fund for retirement may make application to the estate of the deceased to recover the remaining balance.

History: Effective April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

82-05-03-06. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the teachers' fund for retirement that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within sixty days of the discovery of the error.
3. If the underpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the employer or recipient, the underpayment of benefits is to include simple interest at the rate of six percent from the time the underpayment occurred.
4. If the underpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the employer or recipient, the underpayment of benefits will not include simple interest.
5. If an individual dies prior to receiving the underpayment of benefits, the teachers' fund for retirement shall pay the designated beneficiary on record or, in the absence of a designation of beneficiary, to the estate.

History: Effective April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

82-05-03-07. Erroneous payment of benefits - Appeals.

1. A person not satisfied with repayment arrangements made under section 82-05-03-05 may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.
2. The board may release a person from liability to refund an overpayment, in whole or in part, if it determines:
 - a. The receipt of overpayment is not the fault of the recipient.
 - b. It would be contrary to equity and good conscience to collect the refund.

History: Effective April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

CHAPTER 82-05-04

82-05-04-02. Actuarial factors - Optional payment forms.

Under the optional joint and survivor, term certain and life, and partial lump sum ~~and level income~~ forms of annuity payment shall be based on the following actuarial assumptions:

1. Interest rate - 7.25 percent per year, compounded annually.
2. Member's mortality (used for nondisabled members) - A mortality table constructed by blending thirty percent of the mortality rates under a combination of PubT-2010 employee and PubT-2010 healthy retiree tables for males, adjusted by one hundred four percent for ages fifty-five and older, and projected to 2022 using projection scale MP-2019, with seventy percent of the mortality rates under a combination of PubT-2010 employee and PubT-2010 healthy retiree tables for females, adjusted by one hundred four percent for ages fifty-five and older, and projected to 2022 using projection scale MP-2019.
3. Beneficiary's mortality - A mortality table constructed by blending seventy percent of the mortality rates under a combination of PubT-2010 employee and Pub-2010 contingent survivor tables for males, adjusted by ninety-five percent for ages forty-five and older, and projected to 2022 using projection scale MP-2019, with thirty percent of the mortality rates under a combination of PubT-2010 employee and Pub-2010 contingent survivor tables for females, adjusted by ninety-five percent for ages forty-five and older and projected to 2022 using projection scale MP-2019. Mortality tables for survivors under age eighteen use the RP-2014 juvenile tables with fifty percent blending of the male/female rates and projected to 2022 using projection scale MP-2019.
4. Disabled member's mortality - A mortality table constructed by blending thirty percent of the mortality rates under the PubNS-2010 non-safety disabled mortality table for males, projected to 2022 using projection scale MP-2019, with seventy percent of the mortality rates under the PubNS-2010 non-safety disabled mortality table for females, projected to 2022 using projection scale MP-2019.

In addition, the above actuarial assumptions shall be used to determine actuarial equivalence for other purposes not covered by sections 82-05-04-01, 82-05-04-03, and 82-05-04-04, such as the determination of the reduction to a member's benefit because of the existence of a qualified domestic relations order.

History: Effective May 1, 2000; amended effective May 1, 2004; July 1, 2008; April 1, 2016; July 1, 2021; [April 1, 2024](#).

General Authority: NDCC 15-39.1-07

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

CHAPTER 82-05-06

82-05-06-01. Retiree reemployment reporting requirements.

Participating employers and retirees must complete and submit a ~~"TFFR Retired Member Employment Notification"~~ form required by the fund and a copy of the employment contract within thirty days of the retired member's return to covered employment.

Time spent performing extracurricular duties and attending professional development sessions is excluded from the annual hour limit. ~~Extracurricular duties include those duties outlined in the extracurricular schedule of a participating employer's master agreement, unless the duty was part of the retiree's regular job duties and base salary prior to retirement. Employer and member contributions are required to be paid based on the employer payment plan model. Contributions are calculated on the retirement salary paid to the reemployed retiree, including salary for extracurricular duties and professional development.~~

~~— Employer and member contributions are required to be paid on salary earned by retirees who perform in-staff subbing duties while under contract with a teachers' fund for retirement participating employer.~~

~~— Retirees who perform regular substitute teaching duties and are not under contract with that teachers' fund for retirement participating employer are not subject to the annual hour limit and employer and member contributions are not required to be paid.~~

History: Effective July 1, 2008; amended effective July 1, 2012; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-19.1, 15-39.1-19.2

CHAPTER 82-07-01

82-07-01-01. Definitions.

The following definitions govern the determination of disability benefits under the fund:

1. "Medical examination" means an examination conducted by a licensed medical ~~doctor~~ provider or a psychologist that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a teacher.
2. "Permanent ~~disability~~ ~~means a condition of~~ "and total disability" ~~that is static or deteriorating and the prognosis does not indicate an anticipated recovery from the disability~~ means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months and results in the individual's inability to perform the duties of a teacher.
3. "Temporary disability" means a condition of "total disability" that is expected to last at least twelve months, but is not considered permanent.

~~4. "Total disability" means any medically determinable physical or mental impairment that is expected to last for a continuous period of not less than twelve months and results in the individual's inability to perform the duties of a teacher. "Total disability" includes conditions of "temporary disability" and "permanent disability" as defined in this section.~~

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2008; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

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 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.
- b. If the fund member is unable or unwilling to file an application, the member's employer or legal representative may file the member'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 member 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 member'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 member.

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 member's ~~attending or family physician~~ medical provider 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~~ provider 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 "permanent and total disability" or "temporary 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 or designee 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 or designee may make an interim determination concerning eligibility for disability retirement benefits when the medical consultant's report verifies that a permanent and total or temporary 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 member's last day of paid employment.

- h. If the applicant is determined not to be eligible for disability benefits, the executive director or designee 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~~ 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 and total disability. ~~On July first, following~~ 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~~ medical provider at the annuitant's own expense. The submission of medical reports by the member, 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; July 1, 2012; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

CHAPTER 82-07-03

82-07-03-01. Forms of disability benefits.

Except for the ~~level income with social security and~~ partial lump sum distribution ~~options~~option, all optional forms of retirement benefits are available to members entitled to disability retirement annuities.

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2012; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

CHAPTER 82-07-04

82-07-04-01. Suspension of disability benefits.

1. When a member receiving disability retirement benefits is not recertified as eligible for continued benefits, the board shall presume the member does not have a "total disability" and the disability benefits must cease on the first day of the month following the date the member is not recertified eligible for continued benefits.
2. When a member receiving disability retirement benefits returns to active teaching in North Dakota or out of state, the board shall do one of the following:
 - a. Presume the member does not have a "total disability" and, pursuant to subsection 3 of North Dakota Century Code section 15-39.1-18, suspend the member's disability benefits on the first day of the month following the date the member returns to active teaching.
 - b. If the member consents, allow continued payment of the disability benefit for up to six months to permit a member who has partially recovered from the disability to return to active teaching on a trial basis. If the member terminates employment prior to the end of the trial period as set by the board, the board shall not deem the member recovered under North Dakota Century Code section 15-39.1-18, and the member's benefits must continue as permitted under North Dakota Century Code chapter 15-39.1 and this title. If, at the end of the trial period, the member has not terminated employment, the board shall presume the member does not have a ~~"total disability"~~ qualified disability and shall suspend the member's disability benefits on the first day of the month following the date the member's trial period ends pursuant to North Dakota Century Code section 15-39.1-18. A member who has had the member's disability benefit terminated under this section shall reapply to receive any future disability benefit after the conclusion of any trial period.

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2008; April 1, 2024.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18, 15-39.1-19.1

CHAPTER 82-08-01

82-08-01-03. Format for a qualified domestic relations order.

A qualified domestic relations order must be substantially in the following form:

ACTIVE OR INACTIVE MEMBERS

STATE OF NORTH DAKOTA		IN DISTRICT COURT
COUNTY OF _____	_____	JUDICIAL DISTRICT
_____,)	
)	
Plaintiff,)	
)	QUALIFIED DOMESTIC
)	RELATIONS ORDER
-vs-)	
)	Case No. _____
)	
_____,)	
Defendant.)	

.....

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

I. BENEFITS

Benefits under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [_____%] of the member's accrued monthly annuity benefit as of [DATE OF DIVORCE]; (OR)

2. The alternate payee is awarded [\$_____] of the member's accrued monthly annuity benefit as of [DATE OF DIVORCE].

If payments to the alternate payee begin prior to the member's sixty-fifth birthday, such benefits shall be reduced actuarially, except that if the member retires or dies prior to the member's sixty-fifth birthday, the alternate payee shall receive a commensurate share of any early retirement subsidy, beginning as of the date of the member's retirement or death. Such increase shall be determined actuarially.

II. TIME OF BENEFIT RECEIPT

Benefit payments to the alternate payee will begin: (Choose one)

1. When the participating member qualifies for normal retirement benefits under the plan. (OR)
2. When the participating member qualifies for early retirement. (OR)
3. When the alternate payee reaches [DATE OR EVENT]. The date or event must be after the date participating member would qualify for early retirement. (OR)
4. When the participating member retires and begins receiving retirement benefits from the plan.

Benefits to the alternate payee are payable even if the member has not separated from covered employment. In all cases, the payment will not begin later than when the participating member retires.

If the participating member begins receiving disability retirement benefits, the alternate payee will also begin receiving the benefits awarded in section I of this Order. The alternate payee's benefit will begin when the member's benefits begin and will be actuarially reduced to reflect the earlier disability payment start date.

III. DURATION OF PAYMENTS TO ALTERNATE PAYEE OVER THE LIFE OF THE ALTERNATE PAYEE (Choose one)

1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death and will not revert back to the member. The payment shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

(OR)

2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of:

(Choose one)

- (a) a 20-year term certain and life option; (OR)
- (b) a 10-year term certain and life option.

The payment will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

Upon the alternate payee's death, payments will not revert back to the member, but will continue to the alternate payee's designated beneficiary under the term certain and life option identified above.

IV. MEMBER WITHDRAWS FROM RETIREMENT SYSTEM (Choose one)

- A. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [_____] of the member's account balance as of [DATE OF DIVORCE] accumulated with interest as required by the Plan from the divorce date until the refund is paid; (OR)
- B. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [\$_____] from the member's account balance accumulated with interest as required by the Plan from [DATE OF DIVORCE] until the refund is paid. [Note: The dollar amount in this option cannot exceed the member's account balance.]

V. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
 - 1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
 - 2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
 - 3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
 - 4. To provide to the alternate payee any increased benefit due to the participating member under the disability provisions of this plan.
- C. If the alternate payee dies prior to beginning receipt of benefits under this Order, the entire amount that may be due to the alternate payee reverts to the participating member.
- D. If the participating member dies prior to retirement and before the alternate payee begins benefits, the alternate payee will receive [_____] share of the member's survivor benefits based on service as of [DATE OF DIVORCE]. The alternate payee and any other beneficiaries will each select their own form of survivor benefit.

If the alternate payee is already in payment, the benefits will continue and the value of the benefits to the alternate payee will reduce any survivor payment to other beneficiaries.
- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- F. If participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with Internal Revenue Code and any applicable regulations.

- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
- I. Alternate payee shall furnish a certified copy of this Order to RIO.
- J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20_____.

 (Judge Presiding)

OR
RETIRED MEMBERS

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

I. BENEFITS

Benefits to the participating member under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [___%] of the monthly retirement benefit as of [DATE OF DIVORCE]; (OR)
2. The alternate payee is awarded [\$___] of the monthly retirement benefit as of [DATE OF DIVORCE].

II. TIME OF BENEFIT RECEIPT.

The benefits are payable to the alternate payee in the month following receipt of this signed Order by the plan or plan administrator as the participating member is currently retired and receiving benefits under the Plan.

III. DURATION OF BENEFITS TO ALTERNATE PAYEE OVER THE LIFE OF THE PARTICIPATING MEMBER

The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and, if applicable, a continuing monthly annuity will be payable to the surviving alternate payee after the member's death. The amount of the payments to the alternate payee will be calculated on the basis of: (Choose the annuity option in existence at the time of the divorce or legal separation.)

- (1) Single life annuity option (OR)
- (2) 100% joint and survivor option (OR)
- (3) 50% joint and survivor option (OR)
- (4) 20-year term certain and life option (OR)
- (5) 10-year term certain and life option.

If the alternate payee is the designated beneficiary, the alternate payee must remain as the beneficiary under the joint and survivor options.

IV. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
 1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
 2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
 3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
- C. If the provisions of this Order are applied to disability benefits, the benefits will cease to all parties upon the member's recovery. The parties will then need to submit a new order to allow for the equitable distribution of any future benefits payable from the plan.
- D. Upon the alternate payee's death, if the member is still surviving, the entire amount that may be due to the alternate payee reverts to the participating member. Upon the member's death, if the alternate payee is still surviving, the entire benefit will cease under a single life option. Under a joint and survivor option, the alternate payee will receive the one hundred percent or fifty percent survivor benefit for the remainder of the alternate payee's life, since the alternate payee is the joint annuitant. If a term certain option was selected, and the member passes away before the term certain period has expired while the alternate payee is still living, then the benefit to the alternate payee will continue and the member's portion will continue to the member's designated beneficiary to complete the term certain period. If in the last case, the alternate payee dies before all payments due under the certain period have been made, the alternate payee's share will continue to the alternate payee's designated beneficiary.

- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- F. If the participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with the Internal Revenue Code and any applicable regulations.
- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
- I. Alternate payee shall furnish a certified copy of this Order to RIO.
- J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20 _____.

(Judge Presiding)

History: Effective April 1, 1994; amended effective January 1, 1998; May 1, 1998; May 1, 2002; May 1, 2004; [April 1, 2024](#).
General Authority: NDCC 15-39.1-07
Law Implemented: NDCC 15-39.1-12.2

TITLE 85
UNIVERSITY AND SCHOOL LANDS, BOARD OF

APRIL 2024

CHAPTER 85-01-01

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.2, and 57-62, apply to this title:

1. "Acquired lands" includes all property defined as "nongrant" and "other than original grant lands" in North Dakota Century Code section 15-07-01.
2. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.
3. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, and haying, ~~and honey bee pasture or meadow~~.
4. "Board" means the board of university and school lands.
5. "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.
6. "Certified appraiser" means a certified general appraiser or a certified residential appraiser who holds a valid permit issued by the North Dakota real estate appraiser qualifications and ethics board.
7. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.
8. "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.
9. "Coal leased premises" means the land subject to a given coal lease.

10. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
11. "Commercial quantities" means whether:
 - a. The well yields a profit exceeding operating costs over a reasonable period of time; and
 - b. A reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.
12. "Commissioner" means the commissioner of university and school lands.
13. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
14. "Construction aggregate lease" means a contract entered between the board and a third party for mining of construction aggregate on trust lands.
15. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.
16. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.
17. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day-to-day care for the livestock.
18. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.
19. "Department" means the office of the commissioner and the department of trust lands.
20. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.
21. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases which are administered separately.
22. "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area under article 85-04.
23. "F.O.B." means free on board.
24. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but does not include coal, lignite, oil shale, or similar hydrocarbons.
25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.
26. "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

27. "Invasive species" means a species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
28. "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or the seller is not compelled to sell.
29. "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.
30. "Offset drainage" means the drainage of oil or gas to an adjoining tract of land on which a well is being drilled or is already in production.
31. "Offset well" means any well drilled opposite another well on adjoining property with the specific purpose of preventing drainage to the adjoining property.
32. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
33. "Oil and gas lease" means a contract entered between the board and a third party for oil and gas production.
34. "Oil and gas leased premises" means the land subject to a given oil and gas lease.
35. "Oil well" means a well capable of producing oil and which is not a gas well as defined herein.
36. "Original grant lands" means all those lands granted to the state of North Dakota by virtue of the Enabling Act of 1889, as further defined in North Dakota Century Code section 15-06-01.
37. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
38. "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.
39. "Surface land lease" means a contract entered between the board and a third party for agricultural use on trust lands.
40. "Surface land leased premises" means the land area subject to a given surface land lease.
41. "Terminate," unless otherwise provided, has the same meaning as the word "cancel."
42. "Trust lands" means any property owned by the state of North Dakota and managed by the board.
43. "Trusts" means permanent trusts and other funds managed or controlled by the board.
44. "Vertical oil and gas well" means a well, the wellbore of which is drilled on a vertical or directional plane into a non-shale formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation.
45. "When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the

day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019; amended effective January 1, 2020; January 1, 2021; April 1, 2022; April 1, 2024.

General Authority: NDCC 15-05-05, 15-05-09, 15-05-18, 15-07-02, 15-07-20, 15-08.1-06, ~~28-32,~~ 43-30.2-03, 61-33-06

Law Implemented: NDCC 4.1-47-04, ~~15-01~~15-01-02, 15-04, 15-05, 15-07, 15-08, 15-08.1

CHAPTER 85-03-04

85-03-04-03. Entrance conference.

1. Once an examination is assigned and written notice of examination is provided to the person subject to examination, an entrance conference will be scheduled with the examiner and representatives of the person subject to examination. A representative of the administrator may participate in an entrance conference.
2. During the entrance conference, the examiner shall, to the extent practicable:
 - a. Identify the types of property that will be subject to the examination and the time period covered by the examination;
 - b. Discuss an examination work plan, a tentative schedule, and the scope of work;
 - c. Provide contact information for both the examiner and the administrator;
 - d. Notify the person subject to examination of the person's ability to request an informal conference with the administrator pursuant to North Dakota Century Code section 47-30.2-61;
 - e. Advise the person subject to examination that the administrator and not the examiner makes determinations concerning that person's liability under North Dakota Century Code chapter 47-30.2 and that interpretations of that chapter are made by the administrator;
 - f. Request records and materials necessary to proceed with the next steps of the examination;
 - g. Explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned; and
 - h. Explain that, unless otherwise agreed to in writing by the administrator, the person subject to examination shall remit ~~to the examiner~~ any unclaimed property identified during the examination that is owed to the state of North Dakota.

History: Effective April 1, 2022; [amended effective April 1, 2024](#).

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-58, 47-30.2-61, 47-30.2-62

CHAPTER 85-06-01 OIL AND GAS

Section

85-06-01-01	Oil and Gas Lease Nomination
85-06-01-02	Advertisement for Public Auction
85-06-01-03	Public Auction
85-06-01-04	Rejection of Nomination and Bids
85-06-01-05	Form and Term of Oil and Gas Lease
85-06-01-06	Assignment, Amendment, or Extension
85-06-01-07	Voluntary Release
85-06-01-08	Royalties
85-06-01-09	Disputed Title Royalty Escrow Account
85-06-01-10	Breach of Oil and Gas Lease
85-06-01-11	Board Review
85-06-01-12	Reports of Lessee - Delinquency Penalty
85-06-01-13	Audit and Examination
85-06-01-14	Request for Shut-In Status for Oil <u>or Gas</u>
85-06-01-15	Offset Obligations for Vertical Oil and Gas Wells

85-06-01-01. Oil and gas lease nomination.

The department shall accept an oil and gas lease nomination for a tract not already under an oil and gas lease as reflected in department records and may accept a nomination for a tract under an oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

1. The department shall accept a nomination for an oil or gas lease either electronically through the department's website or in writing. The nomination period for an oil and gas lease must be the period set by the commissioner during which the department shall accept oil and gas lease nominations. ~~A nomination must be accompanied by a nonrefundable nomination fee, in an amount set by the department, and the fee must be submitted to the department prior to the published deadline for each nomination period.~~
2. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection 3, or by the board.
3. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as "more or less" and may be adjusted by the board within each quarter section.

History: Effective January 1, 2020; April 1, 2024.

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 61-33-06, 61-33.1

85-06-01-03. Public auction.

The board may issue an oil and gas lease by public auction. Public auctions may be hosted either live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

1. The successful bidder at an ~~online~~-auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, the lease auction

administration fee, and any processing fees via automated clearing house or wire transfer, by five p.m. central standardprevailing time, ten days after the date the auction closed.

2. If no bids are received, the nominator is the successful bidder.

3. The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.

~~2. The successful bidder at a live auction shall pay the bonus, at least one year of rental payments, and the advertising fee via automated clearing house or wire transfer, by five p.m. central standard time ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.~~

~~3. If no bids are received, the nominator is deemed the successful bidder and shall pay the bonus, at least one year of rental payments, the advertising fees, and any processing fee via cash, check, automated clearing house, or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.~~

History: Effective January 1, 2020; amended effective April 1, 2024.

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

85-06-01-08. Royalties.

If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the oil and gas leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due the lessor are as follows:

1. On any gas produced and marketed, except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons, or other products; the royalty, as determined by the board, is based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided the maximum pressure base in measuring the gas under an oil and gas lease at any time may not exceed fourteen and seventy-three hundredths (14.73) pounds per square inch absolute, and the standard base temperature shall be sixty degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the balance method or by the most approved method of testing being used by the industry at the time of testing.
2. On any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, the royalty, as determined by the board, is based on the residue gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein is based on eighty percent or that percent accruing to the lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the oil and gas leased premises, and on forty percent or that percent accruing to the lessee, whichever is greater, of the total plant production of liquid hydrocarbons attributable to the gas produced from the oil and gas leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of ten percent or more, or all such transactions collectively account for an annual average of thirty percent or more of the gas being processed in such plant, the royalty is based on the gross proceeds of sale that would accrue

to the lessee if the gas were processed under the terms of the most remunerative third-party transaction for processing gas in such plant. Respective royalties on residue gas and on liquid hydrocarbons for which the requirements for using third-party transactions cannot be met must be determined by the greater of:

- a. The highest market price paid for any gas or liquid hydrocarbons of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;
 - b. The gross proceeds of sale for such residue gas or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons, F.O.B. at the plant after processing; or
 - c. The gross proceeds of sale paid to a third party processing gas through the plant. The lessee shall furnish copies of any and all third-party gas processing agreements pertaining to the plant upon lessor's request.
3. On carbon black, sulfur, or any other products produced or manufactured from gas, excepting liquid hydrocarbons, whether said gas be "casinghead", "dry", or any other gas, by fractionating, burning, or any other processing, is based on the gross production of such productions, or the market value thereof, at the option of the lessor. Such market value is to be the greater of:
- a. The highest market price paid for each of the products of comparable quality and quantity under comparable conditions of sale in the general area during the same month in which such products are produced; or
 - b. The average gross proceeds of sale for each of the products for the same month in which such productions are produced, provided that if a third-party transaction is used to determine royalty in accordance with subsection 2, the royalty due under this subsection shall be determined in accordance with such transaction.
4. The lessee agrees all royalties accruing to the lessor under this rule are without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities, depreciation, risk capital, and otherwise making the oil, gas, and other products produced hereunder ready for sale or use.

History: Effective January 1, 2020; [amended effective April 1, 2024](#).

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: [N.D. Constitution article IX, § 5](#); NDCC [15-01-02](#), [15-02-05](#), 15-05-09, 15-05-10

85-06-01-10. Breach of oil and gas lease.

1. Other than as provided in subsection 7, an oil and gas lease may be canceled for:
 - a. Nonpayment of any sum due under the oil and gas lease;
 - b. Breach of any ~~of the~~ oil and gas lease terms or conditions ~~provided such cancellation must not release the lessee from liability for any sum due the lessor or from any damages due to the breach~~; or
 - c. A violation of ~~the board rules and policies, and~~ applicable laws, [rules, or board policies](#).
2. Before an oil and gas lease is canceled, the department shall ~~mail~~[send](#) a notice of intention to cancel the ~~oil and gas~~ lease specifying the reason for cancellation to the lessee [listed in the records of the department](#) by mail requiring a signed receipt ~~at to~~ the [lessee's address](#) ~~of the~~

lessee as shown in the records of the department. ~~If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the oil and gas leased premises is located.~~

3. A lessee may file with the commissioner a request for a waiver, or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within thirty days after the date ~~of the~~ notice of intention to cancel the oil and gas lease is ~~received or the date of publication~~ postmarked. A request for a waiver or review is deemed filed when personally delivered or when received by the department. ~~The board may waive any breach except a breach of oil and gas lease terms required under North Dakota Century Code, or the board may allow the lessee time to cure the breach~~ commissioner may allow the lessee time to cure the breach, or may waive any breach, except a breach of oil and gas lease terms required under North Dakota Century Code. Any waiver must be limited to the particular breach waived and ~~may~~ does not limit the board's right to cancel the oil and gas lease for any other breach. If, after review of the request, the commissioner determines cancellation of the lease is still warranted, the commissioner shall request board approval of the cancellation. An oil and gas lease cancellation under this section is exempt from the requirements of section 85-06-01-11.
4. If the lessee has not filed a release of the oil and gas lease with the applicable county recorder's office or requested a waiver or commissioner review ~~or remedied the default~~ within thirty days after ~~receipt~~ the postmark date of a notice of intention to cancel ~~or the date of publication~~ lease, the commissioner ~~shall~~ may cancel the ~~oil and gas~~ lease.
5. ~~Cancellation~~ Release of the oil and gas lease by the lessee or cancellation of the ~~oil and gas~~ lease does not release the lessee from liability for any sum due to the board, ~~other than as provided in subsection 7,~~ or from any damages ~~from~~ caused by a breach of the ~~oil and gas~~ lease.
6. Upon cancellation of the oil and gas lease, the department shall file a ~~satisfaction~~ notice of cancellation of oil and gas lease with the ~~register of deeds'~~ applicable county recorder's office ~~in the county where the oil and gas leased premises is located~~.
7. An oil and gas lease automatically terminates for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

History: Effective January 1, 2020; amended effective April 1, 2024.

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

85-06-01-14. Request for shut-in status for oil or gas.

1. A lessee requesting shut-in status of an oil or gas well, without canceling the ~~oil and gas~~ lease, shall submit a written request to the department utilizing the form available on the department's website. The request must contain the following information:
 - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
 - b. The township, range, and section of the surface location of the well;
 - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;
 - d. The name and address of the operator of the well;

- e. The cumulative ~~oil~~ production and the number of days of production for the three months immediately preceding the request;
 - f. The written approval of the request from the operator;
 - g. The grounds for the request and the anticipated length of time the well will be shut-in; and
 - h. Any additional information requested by the department.
2. An application fee, in an amount set by the department, ~~and the shut-in royalty payment~~ must be submitted with the application. ~~If the application is denied, the shut-in royalty payment will be refunded by the department~~Upon approval of the shut-in request, the applicant shall promptly submit to the department a shut-in well payment. The shut-in well payment must be the same amount for oil or gas wells and must be calculated on a per-lease, per-well basis.
 3. An application is deemed filed when the department receives the application form, application fee, shut-in ~~royalty~~well payment, and any additional information requested by the department.
 4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:
 - a. The application is approved and the terms of the shut-in approval;
 - b. The application is denied;
 - c. An additional fifteen day period is necessary to consider the application; or
 - d. The application requires board approval.
 5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.
 6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.
 7. The commissioner may revoke a shut-in approval if the commissioner determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department shall provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10.

History: Effective January 1, 2020; amended effective April 1, 2024.

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: N.D. Constitution article IX, § 5; NDCC 15-01-02, 15-02-05, 15-05-09, 15-05-10

TITLE 103
STATE RETIREMENT AND INVESTMENT OFFICE

APRIL 2024

CHAPTER 103-01-01

103-01-01-01. Organization of the state retirement and investment office.

1. Organization and administration.

- a. History. Chapter 667 of the 1989 Session Laws created the state retirement and investment office with the law expiring on June 30, 1991. Chapter 628 of the 1991 Session Laws extended the expiration date until June 30, 1993. In 1993, the legislative assembly repealed the expiration date creating North Dakota Century Code chapter 54-52.5. The office was created to coordinate the activities of the state investment board and the teachers' fund for retirement.
- b. Governing authority. The state investment board is the governing authority of the state retirement and investment office. This authority is established by North Dakota Century Code section 54-52.5-02. The board is responsible for overseeing and operating the agency to coordinate the activities of the state investment board and the teachers' fund for retirement.

2. Description of portion of organization and functions subject to North Dakota Century Code chapter 28-32. The state retirement and investment office is an administrative agency under ~~subsection 1~~subsection 2 of North Dakota Century Code section 28-32-01.

3. Inquiries. General inquiries and questions may be ~~addressed to:~~sent to the address listed on the agency website at www.rio.nd.gov.

~~Retirement and Investment Office
1930 Burnt Boat Drive
P.O. Box 7100
Bismarck, ND 58507-7100

Telephone: 701-224-4885
800-952-2970
Fax: 701-224-4897~~

History: Effective September 1, 1994; amended effective April 1, 2024.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~28-32-02.1~~28-32-02(1)

TITLE 111
MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

APRIL 2024

CHAPTER 111-01-01

111-01-01-01. Organization of marriage and family therapy licensure board.

1. **History and function.** The 2005 legislative assembly passed the Marriage and Family Therapy Practice Act, codified as North Dakota Century Code chapter 43-53. This chapter requires the governor to appoint the board. The board, generally speaking, monitors the relationship and interaction between the licenseholder and the public. It is the responsibility of the board to protect the public against poorly trained marriage and family therapists.
2. **Board membership.** The board consists of five members, of which at least three must be licensed practicing marriage and family therapists and at least one must represent the general public. Board members are appointed by the governor. The members serve four-year terms.
3. **Inquiries.** Inquiries regarding the board may be addressed to:

Reverend Larry J. Giese
~~3910 Lewis Road NW~~327 Buckskin Avenue
~~Mandan, ND 58554-1361~~Bismarck, ND 58503

History: Effective July 1, 2010; amended effective April 1, 2024.

General Authority: NDCC ~~28-32-02~~43-53-05

Law Implemented: NDCC ~~28-32-02~~, 43-53-04, 43-53-05

CHAPTER 111-02-01

111-02-01-01. Definitions.

Unless the context otherwise requires, the following terms have the meanings given:

1. "Accredited institutions or programs" means institutions or programs which hold accreditation or candidacy status from an accreditation organization recognized by the council for higher education accreditation or postgraduate academic programs in marriage and family therapy accredited by the commission on accreditation of the American association for marriage and family therapy.
2. "Applicant" means an individual seeking licensure by the marriage and family therapy licensure board as a marriage and family therapist.
3. "Certified professions or occupations" means those professions or occupations that have a certification process based upon specific criteria identified as necessary for effective performance of the profession or occupation. The certification process must include:
 - a. Eligibility requirements established through education or experience, or both;
 - b. Successful completion of a competency-based written examination;
 - c. Successful demonstration of competent clinical skills; and
 - d. Assurance of practitioner competencies through mandatory recertification and continuing education requirements.
4. "Dual relationship" means a relationship between a therapist and another person with whom such relationships are prohibited by law or rule that is both professional and one or more of the following: cohabitational, familial, or supervisory, or that includes significant personal involvement or financial involvement other than legitimate payment for therapeutic services rendered.
5. "Emeritus" means retired from active practice but retaining one's license and title.
6. "Family system" means an open, ongoing, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality, and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health, and temperament) and its sociocultural and historic position in its larger environment.
7. "Fee splitting" means the practice of paying commissions to colleagues for referrals.
8. "LAMFT" are the initials permitted to be used by an associate marriage and family therapist licensee to designate that the individual has completed the educational requirements for a marriage and family therapy license, has successfully passed the licensing examination, and is in the process of completing postgraduate supervision for the licensing requirements.
9. "Licensee" means a licensed marriage and family therapist.
10. "LMFT" are the initials permitted to be used by a licensed marriage and family therapist to designate that the individual is licensed by the marriage and family therapy licensure board.

11. "Postgraduate supervised experience" means supervised experience occurring after the accredited educational institution grants the degree for licensure as shown on the applicant's transcript and all educational requirements specified in section 111-02-02-02.

12. "Provisional license" means a license granted temporarily if an applicant has submitted all the documents and met criteria for licensure and the board has approved the applicant for oral examination.

~~12.~~13. "Sexual contact" means any of the following, whether or not occurring with the consent of a person with whom such conduct is prohibited by law or rule:

- a. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal openings of the body by any part of the therapist's body or by any object used by the therapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the therapist's body by any part of another person's body or by any object used by another person for this purpose, if agreed to by the therapist;
- b. Kissing of, or the intentional touching by the therapist of another person's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts; or
- c. Kissing of, or the intentional touching by another person of the therapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the therapist agrees to the kissing or intentional touching.

Sexual contact includes requests by the therapist for conduct described in subdivisions a to c.

Sexual contact does not include conduct described in subdivision a or b that is a part of standard medical treatment of a patient.

~~13.~~14. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

~~14.~~15. "Supervisee" means an individual who is engaged in postgraduate, supervised experience under the direction of a supervisor.

~~15.~~16. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of marriage and family therapy of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and supervisee.

~~46-17.~~ "Supervisor" means an individual who has met the requirements in section 111-02-02-04 and takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.

~~47-18.~~ "Therapeutic deception" means a representation by a therapist that sexual contact or unethical conduct with the therapist is consistent with or part of the professional work with a client, student, or supervisee or former client, student, or supervisee.

~~48-19.~~ "Therapist" means a licensee of the board.

~~49-20.~~ "Variance" means permission from the board to comply with a rule in a manner other than that generally specified. To request a variance, an applicant or licensee shall submit a letter in writing directly to the board. A variance must not be granted until the board has approved the request.

History: Effective July 1, 2010; amended effective January 1, 2018; April 1, 2024.

General Authority: NDCC ~~28-32-02~~, 43-53-05

Law Implemented: NDCC 43-53-01, 43-53-02

111-02-01-05. Code of ethics.

1. The code of ethics applies to all licensees and applicants who practice marriage and family therapy and applies to their conduct during the period of education and training required for licensure.
2. The code of ethics constitutes the standards by which the professional conduct of a marriage and family therapist is measured.
3. A violation of the code of ethics is unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure or revocation of license.
4. A marriage and family therapist must act in accordance with the highest standards of professional integrity and competence. A marriage and family therapist must be honest in dealing with clients, students, trainees, colleagues, and the public.
 - a. A therapist must not perform, nor pretend to be able to perform, professional services beyond the therapist's field or fields of competence.
 - b. A therapist must not permit a trainee or intern under the therapist's supervision to perform, nor pretend to be competent to perform, professional services beyond the trainee's or intern's level of training.
 - c. A therapist must recognize the potentially influential position the therapist may have with respect to students, interns, employees, and supervisees, and must avoid exploiting the trust and dependency of these persons. A therapist must make every effort to avoid dual relationships that could impair the therapist's professional judgment or increase the risk of exploitation. Sexual contact between the therapist and students, employees, independent contractors, colleagues, or supervisees is prohibited for two years after the date that the relationship is terminated, whether or not the party is informed that the relationship is terminated. Sexual contact after two years with a former student, intern, employee, or supervisee is prohibited:
 - (1) If the former student, intern, employee, or supervisee was emotionally dependent upon the therapist; or
 - (2) If the sexual contact occurred by means of therapeutic deception.

- d. A therapist must not engage in sexual contact or other harassment, therapeutic deception, or exploitation of students, trainees, interns, employees, independent contractors, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.
- e. A therapist must not use or exploit the professional relationship with a student, trainee, intern, employee, independent contractor, colleague, research subject, or actual or potential witness or complainant in ethical proceedings in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
- f. A therapist must recognize that there are other professional, technical, and administrative resources available to clients. The therapist must make referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services. The therapist must make a reasonably prompt referral when requested to do so by the client, without consideration of limitation of third-party payers.
- g. A therapist must not offer, nor accept, payment for referrals.
- h. A therapist must not knowingly offer services to a client who is in treatment with another professional without consultation among the parties involved. If a client refuses to allow consultation, the therapist should delay the administration of service until the client gives written consent to consultation. The exception to the consultation requirement would be if the client reports ethical violations by the other professional.
- i. A therapist must understand the areas of competence of related professions and act with due regard for the need, special competencies, and obligations of their colleagues in other allied professions, and must not disparage the qualifications of any colleague.
- j. A therapist must seek appropriate professional assistance for the therapist's own personal problems or conflicts that are likely to impair the therapist's work performance and clinical judgment.
- k. A therapist must not practice under the influence of alcohol or any controlled substance not lawfully prescribed.
- l. A therapist must not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the therapist's evaluation or treatment of the client.
- m. A therapist must file a complaint with the board when the therapist has reason to believe that another therapist is or has been engaged in conduct which violates this section, North Dakota criminal statutes, or which is grounds for disciplinary proceedings in North Dakota Century Code section 43-53-10.
- n. A therapist must not engage in any conduct likely to deceive or defraud the public or the board.
- o. A therapist must not advertise in a way that is false, fraudulent, or misleading to the public.
- p. A therapist shall use only academic degrees from regionally accredited institutions that are related to the practice of marriage and family therapy in any situation or circumstance related to the practice of marriage and family therapy. Those therapists holding current North Dakota mental health professional licenses issued by other North Dakota licensing boards may also use degrees and titles directly related to these licenses as permitted by the other boards when the other licensure is cited with the marriage and family licensure.

- q. A therapist must correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the therapist's qualifications, services, or products.
 - r. A therapist must make certain that the qualifications of a person in a therapist's employ as a student, independent contractor, or an intern are represented in a manner that is not false, misleading, or deceptive.
 - s. A therapist must not engage in any unprofessional conduct. Unprofessional conduct is any conduct violating this section or violating those standards of professional behavior that have become established by consensus of the expert opinion of marriage and family therapists as reasonably necessary for the protection of the public interest.
5. A marriage and family therapist's primary professional responsibility is to the client. A marriage and family therapist must make every reasonable effort to advance the welfare and best interests of families and individuals. A marriage and family therapist must respect the rights of those persons seeking assistance and make reasonable efforts to ensure that the therapist's services are used appropriately. A marriage therapist is bound by these ethics primarily. These ethics supersede any policies of an employer or contractor that may be contrary.
- a. Once a client has been accepted into therapy, a therapist must not discriminate on the basis of age, sex, race, national origin, religion, physical disability, political affiliation, or social or economic status. In addition, a therapist must not discriminate on the basis of affectional preference, or choice of lifestyle. When unable to offer services for any reason, a therapist shall make an appropriate referral.
 - b. A therapist must recognize the potentially influential position the therapist may have with respect to clients, and must avoid exploiting the trust and dependency of clients. A therapist must make every effort to avoid dual relationships with clients that could impair the therapist's professional judgment or increase the risk of exploitation.
 - c. A therapist must be careful to truthfully represent to clients facts regarding services rendered.
 - d. A therapist must recognize the importance of clear understandings on financial matters with clients. Arrangements for fees and payments must be made at the beginning of the therapeutic relationship.
 - e. A therapist must not engage in sexual contact or other physical intimacies with a client. Sexual contact with a former client is prohibited.
 - f. A therapist must not engage in sexual or other harassment of a client, nor in any verbal or physical behavior that is sexually seductive or sexually demeaning to the client. For purposes of this item, sexual harassment has the meaning given it in subsection 15 of section 111-02-01-01.
 - g. A therapist must not use or exploit the professional relationship with a client in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
 - h. A therapist must not use any confidence of a client to the client's disadvantage.
 - i. A therapist must terminate a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests.
 - j. A therapist must not provide services to a client when the therapist's objectivity or effectiveness is impaired. Whenever a therapist's objectivity or effectiveness becomes

impaired during a professional relationship with a client, the therapist must notify the client orally and in writing that the therapist can no longer see the client professionally and must assist the client in obtaining services from another professional.

- k. A therapist must respect the right of a client to make decisions and must help the client understand the consequences of the decisions. A therapist must advise a client that a decision on marital status is the responsibility of the client.
- l. A therapist must inform a client of a divergence of interests, values, attitudes, or biases between a client and the therapist that is sufficient to impair their professional relationship. Either the client or the therapist may terminate the relationship.
- m. In the course of professional practice, a therapist must not violate any law concerning the reporting of abuse of children under North Dakota Century Code chapter 50-25 and vulnerable adults under North Dakota Century Code chapter 50-25.2.
- n. A therapist must display prominently on the premises of the therapist's professional practice or make available as a handout the bill of rights of clients, including a statement that consumers of marriage and family therapy services offered by marriage and family therapists licensed by the state of North Dakota have the right to:
 - (1) Expect that a therapist has met the minimal qualifications of training and experience required by state law;
 - (2) Examine public records maintained by the marriage and family therapy licensure board which contain the credentials of a therapist;
 - (3) Obtain a copy of the code of ethics from the marriage and family therapy licensure board;
 - (4) Report complaints to the marriage and family therapy licensure board;
 - (5) Be informed of the cost of professional services before receiving the services;
 - (6) Privacy as defined by rule and law;
 - (7) Be free from being the object of discrimination on the basis of race, religion, gender, or other unlawful category while receiving services;
 - (8) Have access to their records; and
 - (9) Be free from exploitation for the benefit or advantage of a therapist.
- o. A therapist must, upon request from the client, provide information regarding the procedure for filing a complaint with the board.

p. It is a violation of the code of ethics for a marriage and family therapist licensed by the board to engage in any practice or treatment that attempts to change or repair the sexual orientation or gender identity of a lesbian, gay, bisexual, transgender, or questioning individual, commonly referred to as conversion or reparative therapy.

As used in this section, "conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behavior or gender expression or to eliminate or reduce sexual or romantic attraction or feelings toward an individual of the same gender. Conversion or reparative therapy does not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.

including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or identity.

6. A marriage and family therapist must hold in confidence all information obtained in the course of professional services. A marriage and family therapist must safeguard client confidences as required by law.
 - a. A therapist, and employees and professional associates of the therapist, must not disclose any private information that the therapist, employee, or associate may have acquired in rendering services except as provided by law. All other private information must be disclosed only with the informed consent of the client.
 - b. A therapist must be responsible for informing clients of the limits of confidentiality.
 - c. For purposes of safeguarding confidentiality, when seeing a couple or a family, a therapist must define who the "client" is as soon as it is possible to determine the client. For example, a therapist must define whether the couple or family, as a unit, is the client or whether the individuals who make up the couple or family are the clients.
 - d. When seeing a couple or a family, a therapist must inform the client, at the beginning of the relationship, what the therapist's procedures are for handling confidences from individual members of the family and for protecting individuals' privacy while safeguarding the integrity of the therapy process.
 - e. Whenever marriage and family therapy services are requested or paid for by one client for another, the therapist must inform both clients of the therapist's responsibility to treat any information gained in the course of rendering the services as private information.
 - f. A therapist must limit access to client records and must inform every individual associated with the agency or facility of the therapist, such as a staff member, student, or volunteer, that access to client records must be limited to only the therapist with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the informed written consent of the client.
 - g. A therapist must continue to maintain as private information the records of a client for ten years after the professional relationship between the therapist and the client has ceased. The therapist must store and dispose of records in ways that maintain confidentiality.
 - h. A therapist must disclose to the board and its agents client records that the board and its agents consider to be germane to a disciplinary proceeding.
 - i. A therapist must obtain written, informed consent from each client before electronically recording sessions with that client or before permitting third-party supervisory observation of their sessions. The consent form should specify the purpose and proposed audience for the recording.
 - j. A therapist must disguise adequately the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.
 - k. A client who is the recipient of marriage and family therapy services has the right to access the records related to the service maintained by the licensee on that client, provided the records are not classified as confidential by North Dakota law.

- I. A marriage and family therapist must maintain an accurate record for each client. Each record must minimally contain:
 - (1) A client personal data record which shall include the presenting problem;
 - (2) A treatment plan with a diagnosis and justification for it and treatment goals;
 - (3) An accurate chronological listing of all client contacts and a summary of each;
 - (4) Records of any consultation or supervision received in relation to the client;
 - (5) A termination statement indicating the date and reason for termination, the client's condition at the time, and any recommendations made to the client;
 - (6) Copies of all client authorization for release of information and any other legal forms pertaining to the client; and
 - (7) A chronological listing of all fees or charges for services related to the client and to whom the fees were charged. This record may be kept separate from the client's clinical file.

7. A marriage and family therapist must conduct research activities with full respect for the rights and dignity of participants and with full concern for their welfare according to the requirements of the "Ethical Principles of Psychologists, General Principle 9: Research With Human Participants", American psychological association, as amended June 2, 1989. These requirements are incorporated by reference. The requirements were published in "American Psychologist", March 1990, volume 45, number 3, pages 390-395. Participation in research is voluntary.

History: Effective July 1, 2010; amended effective January 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~28-32-02~~, 43-53-05

Law Implemented: NDCC 43-53-05, 43-53-10, 43-53-11

111-02-01-06. Continuing education.

1. A licensee must regularly engage in continuing education related to the practice of marriage and family therapy as defined in this section.
2. Licensed marriage and family therapists must complete a minimum of thirty hours of continuing education every two years, of which six hours must be ethics. Licensed associates must complete fifteen hours of continuing education every year, of which three hours must be ethics. A board approved supervisor or American association for marriage and family therapy approved supervisor shall dedicate ten percent, three continuing education units, of continuing education in courses on supervision. The required number of hours shall be prorated for persons who are initially licensed during a given reporting period. Licensed marriage and family therapists shall attest to the board as to completion of the required hours upon renewal of the license in each odd-numbered year. Licensed associate marriage and family therapists shall attest to the board as to completion of the required hours upon renewal of the license each year. At the time of license renewal in each odd-numbered year or at the time of application for reinstatement of a license, a licensed marriage and family therapist shall attest to completion of a minimum of thirty approved continuing education hours since last renewal or the minimum number required for reinstatement. Failure to complete the attestation required results in nonrenewal of licensure.
3. When the licensee applies for renewal of the license in the odd-numbered year or is audited, the licensee must submit documentation of the licensee's completion of the required hours of continuing education on an appropriate form furnished by the board. A receipt for payment of

the fees for the course is not sufficient evidence of completion of the required hours of continuing education. Licensees shall keep attendance certificates for at least five years as the board may conduct random audits to verify compliance with subsection 2.

4. A course may not be counted toward a licensee's continuing education requirements unless it has been approved by the board according to the procedures in this subsection and subsections 5 to 10. Courses may be approved for all attendees when submitted by the sponsor as prescribed in subsection 11 or a licensee may request individual approval as prescribed in subsection 6. The board shall consider the following factors in determining whether a course should be approved:
 - a. The course's relevance to the therapeutic practices of marriage and family therapy.
 - b. Whether the course is structured on sound educational principles and fits into one of the following categories:
 - (1) Structured educational programs with an instructor as a part of conventions, workshops, seminars, lectures, interactive media, and graduate and postgraduate courses from regionally accredited institutions. All coursework must include the areas described in subdivision d; and
 - (2) Home study courses related to marriage and family therapy as described in subdivision d. Programs must have an independently graded test component. No more than one-half, or fifteen continuing education unit hours, of the required thirty continuing education hours may be earned by this method.
 - c. Whether the course is at least one hour in length. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format. Time for home study courses shall be based on developer's research on average time to complete.
 - d. Whether the subject of the course is related to marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of psychotherapeutic work with couples or families. Continuing education for marriage and family therapy generally evolves from the following areas:
 - (1) Historical, theoretical foundations, and contemporary conceptual directions of the field of marriage and family therapy;
 - (2) Assessment, diagnosis, and treatment in marriage and family therapy including both dysfunctional relationship patterns and nervous and mental disorders, whether cognitive, affective, or behavioral;
 - (3) Family studies including the life cycle of the family, the process and modification of family structures over time, and issues related to ethnicity, race, socioeconomic status, culture, gender, and sexuality;
 - (4) Human development including human behavior, personality theory, sexuality, psychopathology, behavior pathology, and physical and mental impairments and disabilities that affect normal development;
 - (5) Ethics and professional studies covering legal responsibilities and liabilities of licensure, clinical practice, research, family law, and confidentiality issues; and
 - (6) Supervision in marriage and family therapy including theories and practices.

- e. Whether the course's instructors or developers are qualified by practical or academic experience to teach, lecture, make presentations, or develop courses.
5. The board may use a committee, which may include nonboard members, to evaluate applications for course approval.
6. A licensee's application for course approval:
 - a. A licensee must apply individually for approval of continuing education courses that have not been approved by the board in subsection 11. The licensee must submit information required in subdivision b, as well as other information the board reasonably requires to evaluate the course for approval. ~~An application fee of ten dollars per course for approval must be assessed by the board for non-preapproved continuing education units in subsection 11 for licensed marriage and family therapists. An application fee of five dollars per course for approval must be assessed by the board for non-preapproved continuing education units in subsection 11 for licensed associate marriage and family therapists.~~
 - b. The following information must be submitted to the board, in addition to the form required in subsection 3, by the licensee:
 - (1) The name and address of the organization sponsoring the course;
 - (2) A detailed description of the course content;
 - (3) The name of each instructor or presenter and the instructor's or presenter's credentials; and
 - (4) The location, including the name and address of the facility, at which the course will be conducted.
 - c. Licensees seeking approval for a course not previously approved by the board are strongly encouraged to seek board approval before attending the course. Licensees have sixty days following the continuing education event to seek approval for a course not preapproved in advance by the board.
 - d. All American association for marriage and family therapy approved continuing education are deemed approved by the North Dakota marriage and family therapy licensure board. All individual state marriage and family therapy board approved continuing education must be approved by the North Dakota marriage and family therapy licensure board.
 - e. The board shall deny approval for a course if it does not meet the standards in subsection 4. The board shall notify the applicant in writing of its reasons for denying approval of a course under this subsection.
7. Continuing education credit may not be applied for marketing the business aspects of one's practice, time management, supervisory sessions, staff orientation, agency activities that address procedural issues, personal therapy, or other methods not structured on sound education principles or contrary to the code of ethics. Continuing education credit may be applied for the following programs that comply with the requirements of subsection 4:
 - a. Programs specifically listed in paragraphs 1 and 2 of subdivision b of subsection 4;
 - b. Teaching a marriage and family course in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the course. The course must be related to marriage and family

therapy as described in subdivision d of subsection 4. Ten continuing education hours may be earned for each semester credit-hour taught;

- c. Research of an original nature directly related to marriage and family therapy as described in paragraphs 1 to 6 of subdivision d of subsection 4. This activity must be preapproved by the board. Hours of credit for this activity shall be negotiated based on the nature of the project. Contact the board for appropriate preapproval forms;
 - d. Authoring, editing, or reviewing in an area of marriage and family therapy as described in subdivision d of subsection 4. Continuing education hours may be earned only in the year of publication. The maximum hours earned are as follows:
 - (1) Author of a professional book, thirty hours;
 - (2) Author of a professional book chapter or journal article, fifteen hours;
 - (3) Editor of a professional book or journal, twenty-five hours; and
 - (4) Journal article review, one hour per manuscript;
 - e. Presentations at workshops, seminars, symposia, meetings of professional organizations, or postgraduate institutes. The presentation must be related to marriage and family therapy as described in subdivision d of subsection 4. One hour of development time equals one continuing education hour and up to three hours of development time may be claimed for each hour of presentation. Continuing education hours may be earned only for the licensee's first presentation on the subject developed; and
 - f. Individually designed continuing education activity. Licensees may submit proposals for continuing education activities which do not meet other guidelines established within this section. The proposal request must include the following:
 - (1) The rationale for pursuing an individually designed activity;
 - (2) Specific goals and objectives, and an explanation of how the goals and objectives are related to the enhancement of the licensee's professional skills;
 - (3) An outline of the topics to be covered;
 - (4) A description of related resources and activities;
 - (5) The proposed documentation of completion of activity; and
 - (6) The estimate of time to be expended on the activity and the number of continuing education hours requested. The board shall have final say in the number of hours credited for completion of such activity. Subdivisions d to f require preapproval. The applicant must obtain preapproval forms from the board.
8. Continuing education shall be credited on an hour-for-hour basis except as noted in subsection 7. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format.
9. A licensee whose license has not expired and who meets any of the following conditions is exempt from continuing education requirements in this section if the licensee files with the board an affidavit specifying that the licensee:
- a. Is retired from practice and does not perform marriage and family therapy services on a volunteer or free basis;

- b. Is permanently disabled and unable to practice marriage and family therapy, accompanied by a statement from the licensee's physician;
 - c. Has been granted emeritus status as specified in section 111-02-04-05; or
 - d. Has been called to active duty in the armed forces of the United States.
10. A licensee claiming exemption under subsection 9 who later decides to resume practice must submit to the board, before resuming practice, a written notice that the licensee intends to resume practice. The licensee must also submit evidence that the licensee has completed continuing education requirements that are equivalent to what the requirements would have been without the exemption for the five years or any portion of the five years immediately preceding the date of the notice of intent to resume practice.
11. Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer courses for approval shall submit to the board a completed application on a form provided by the board. The course sponsor must meet the requirements in subdivisions a through d to receive and maintain course approval.
- a. The application for course approval must be submitted at least sixty days before the course is scheduled to begin and must include the sponsor's application and an annual nonrefundable continuing education course fee of one hundred dollars.
 - b. The application for course approval must include the following information to enable the board to determine whether the course meets the standards for board approval specified in subsection 4:
 - (1) A statement of the objectives of the course and the knowledge the participants will have gained upon completion of the course;
 - (2) A description of the content and methodology of the course which will allow the participants to meet the objectives;
 - (3) A description of the method to be used by the participants to evaluate the course;
 - (4) A listing of the qualifications of each instructor or developer which shows the instructor's or developer's current knowledge and skill in the course's subject; and
 - (5) A description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the course.
 - c. If the board approves a course, the board shall assign a number to the course. The approval remains in effect for one year from the date of initial approval. The board shall compile a list of approved courses at least once per calendar year. To retain course approval, a course sponsor must submit to the board a new application for course approval required in subdivisions a and b and the application fee for approval of a continuing education course required before the expiration of the one-year period.
 - (1) Each sponsor of an approved course may announce, as to a course that has been approved by the board, that: "This course has been approved by the North Dakota Marriage and Family Therapy Licensure Board for ___ hours of credit."
 - (2) The course sponsor shall submit proposed changes in an approved course to the board for its approval.
 - d. The board shall approve or disapprove a sponsor's application for course approval.

- e. The board shall deny approval of a course if it does not meet the standards in subsection 4. The board shall notify the course sponsor in writing of its reasons for denying approval of a course.
- f. The board shall revoke its approval of a course if a course sponsor fails to comply with subdivision c and any part of subsection 4, or if a course sponsor falsifies information requested by the board in the application for approval of a course.

History: Effective July 1, 2010; amended effective January 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~28-32-02~~, 43-53-05

Law Implemented: NDCC 43-53-05, 43-53-09

CHAPTER 111-02-02

111-02-02-03. Experience requirements.

1. The two years (full time, or up to forty-eight months part time) of supervised, postgraduate experience required by subsection 3 of North Dakota Century Code section 43-53-06 must meet the following:
2. In calculating two years of supervised postgraduate experience in marriage and family therapy, the board shall accept a minimum of three thousand hours, of which one thousand five hundred hours of direct clinical client contact, including the assessment, diagnosis, and treatment of mental illness as specified in subsection 3 with two hundred hours of postgraduate supervision by a North Dakota or other approved jurisdiction licensed marriage and family therapist supervisor over a period of not less than twenty-four months, full time, and no more than forty-eight months, part time. All additional work used to complete this two-year experience may be supervised in a legal and ethical manner by a licensed marriage and family therapist credentialed for supervision or a licensed mental health professional as specified in the North Dakota Century Code chapter 43-53 approved supervisor definition.
3. The applicant must demonstrate at least five hundred hours of the direct clinical client contact required in each of the following categories of cases:
 - a. Unmarried couples, married couples, and separating and divorcing couples;
 - b. Family groups, including children; and
 - c. Individual services.

This contact shall include experience in the assessment, diagnosis, and treatment of mental illness. The board may consider waiving part of this requirement for good cause shown.

4. The supervision by a North Dakota or other jurisdiction licensed marriage and family therapist shall take place in individual and group settings, according to the following:
 - a. The individual supervision shall take place in a setting in which a supervisor and not more than two supervisees are present.
 - b. The group supervision shall take place in a setting in which a supervisor and not more than six supervisees, but not less than three supervisees, are present.
5. Supervision must involve:
 - a. At least two hundred hours of face-to-face contact between the supervisor and supervisee of which at least one hundred hours must be in individual settings.
 - b. One hundred hours of supervision per year full time or fifty hours per year part time.
 - c. A focus on the raw data from the supervisee's clinical work that is made directly available to the supervisor through means of written clinical materials, direct observation, and audio or video recordings.
 - d. During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

- e. During the postgraduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the act or administrative rules.
 - f. Supervision must be conducted under a supervision agreement, which must be submitted to the board on the official form within sixty days of the initiation of supervision. The associate must receive a minimum of one hour of supervision every two weeks. There is no limit to the number of hours that can be completed via two-way interactive audio and visual communications. All supervision hours completed through real-time two-way interactive communication that has both audio and visual count as in-person supervision hours.
 - g. The associate must receive a minimum of one hour of supervision every two weeks. ~~A supervision hour is fifty minutes. Up to one hundred hours of the two hundred hours of face-to-face supervision may occur via secured telephonic or other electronic media, as approved by the supervisor.~~
 - h. An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.
 - i. The associate may receive credit for up to five hundred clock-hours toward the required three thousand hours of supervised clinical services ~~by providing services via telephonic or other electronic media, as approved by the supervisor.~~ There is no limit to the number of hours that can be completed via two-way interactive audio and visual communications. All supervision hours completed through real-time two-way interactive communication that has both audio and visual count as in-person supervision hours.
6. A supervisee must verify the required supervised experience by completing a form supplied by the board. The form must be signed by the applicant's supervisor and be deemed truthful subject to penalties for making a false statement under North Dakota Century Code section 12.1-11-02. The form must include the setting, nature, and extent of the supervised experience, the time period involved, the number of hours of clinical client contact, the number of hours of supervision, and the name and qualifications of each supervisor.

History: Effective July 1, 2010; amended effective January 1, 2018; April 1, 2024.

General Authority: NDCC 23-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

**CHAPTER 111-02-04
LICENSEE - RENEWAL OF LICENSE AND FEES**

Section

111-02-04-01	Renewal of License and Fees
111-02-04-02	Term of License
111-02-04-03	Reinstatement of License
111-02-04-04	Termination <u>Surrender</u> of License
111-02-04-05	Emeritus License Status

111-02-04-01. Renewal of license and fees.

1. Licenses issued by the board must be renewed biennially upon the payment of the renewal fee required in subsection 4, completion of a renewal application, and the attested reporting of continuing education requirements in section 111-02-01-06. Licensed associates renew on an annual basis up to forty-eight months.
2. The board shall send the licensee a written renewal notice identifying the amount of the renewal fee. The notice shall be sent to the licensee's last-known address on record with the board. A licensee must notify the board in writing of any change of name, address, and cell, residential, or business telephone numbers within thirty days after any change. Failure to receive the renewal notice does not relieve the licensee of the obligation to renew the license.
3. The licensee must submit to the board a completed renewal application on a form provided by the board. The licensee must submit the renewal application so that the application is postmarked on or before December thirty-first. If the postmark is illegible, the renewal application is timely if received in the board office by mail on the first workday after December thirty-first.
4. The original license fee is ~~four hundred fifty~~three hundred twenty-eight dollars. The renewal license fee is ~~three hundred sixty~~two hundred eighty-eight dollars. These fees must accompany the original and renewal applications to be complete. The licensed associate original fee is one hundred ~~eighty~~thirty dollars ~~per year~~. The renewal associate fee is ~~ninety~~seventy-five dollars per year.

Other fees:

- a. Application for admission to the written examination fee shall be the current rate as established by the association of marriage and family therapy regulatory boards and a written examination fee in accordance with the current contracted examination fee.
- b. Application for original licensure by endorsement fee, ~~five hundred fifty~~three hundred forty dollars.
- c. Oral examination fee, ~~seventy-five~~forty dollars.
- d. Duplicate license fee, ~~thirty~~fifteen dollars. Duplicate wallet renewal card, fifteen dollars.
- e. Sponsor's application for approval of a continuing education course fee, one hundred dollars.
- f. Late fee for renewal, ~~three~~one hundred dollars postmarked one through ~~ninety days late,~~ ~~four hundred dollars postmarked ninety-one through~~ three hundred sixty-five days late. Licensed associate late fee, ~~one hundred~~fifty dollars postmarked one through three hundred sixty-five days late.

- g. Renewal application fee for a licensed associate marriage and family therapy license fee, forty dollars. Renewal application fee for a licensed marriage and family therapist, forty dollars.
 - h. Renewal of associate marriage and family therapy license annual fee, ninety dollars. May be renewed up to four years or three renewals.
 - i. The cost of background checks are the burden of the applicant.
 - j. The one-time emeritus license fee, two hundred dollars.
 - k. License verification fee, twenty-five dollars.
5. Failure to renew.
- a. The following procedure applies if a licensee fails to submit the renewal application according to subsection 3 or fails to fulfill or report continuing education requirements in section 111-02-01-06.
 - b. If the licensee fails to submit to the board the renewal application, information about continuing education requirements, and the renewal fees specified in subsection 4, on or before December thirty-first, the license expires and the licensee's right to practice terminates on December thirty-first. The board shall mail to the former licensee a written notice that the licensee's license has expired and the licensee's right to practice has terminated. The board shall send the notice to the licensee's last-known address on record with the board. The board shall instruct the former licensee to promptly return the licensee's board-issued license certificate, written in calligraphy, to the board office.
 - c. A license that expired under this section may be reinstated under section 111-02-04-03.

History: Effective July 1, 2010; amended effective January 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~28-32-02~~, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-09

111-02-04-02. Term of license.

- 1. An original license is effective after:
 - a. The board notifies the applicant in writing that the applicant has been approved for licensure;
 - b. The applicant has paid the original license fee in subsection 4 of section 111-02-04-01; ~~and~~
 - c. The board assigns a license number to the applicant; and
 - d. The applicant has met all the requirements of the application and has completed the oral exam and background check.
- 2. An original license granted by the board is valid for a two-year period beginning with the effective date in subsection 1 and ending on December thirty-first of the biennial year in which the license was initially granted. For example, an original license granted on May 6, 2017, is valid from May 6, 2017, to December 31, 2019. A subsequent renewal license is valid for a two-year period ending on December thirty-first, and shall prorate the fees per month which are not covered in the original license fee. For example, an original license which was granted on May 6, 2017, expires on December 31, 2019. The months not covered by the original license fees are seven, from May through December. The license must be renewed for a two-year period according to the procedures in section 111-02-04-01.

3. A provisional license is effective after:

- a. The board notifies the applicant in writing that the applicant has been approved for a provisional license;
- b. The applicant has paid the original license fee in subsection 4 of section 111-02-04-01;
- c. The board assigns a license number to the applicant; and
- d. The applicant has submitted an application with all necessary documentation and two board members have approved the application as having met requirements and an oral exam is scheduled.

4. The provisional license allows an applicant to practice as an LMFT with all the privileges and responsibilities of the profession. This allows a potential licensee to practice prior to being granted full license, completing the oral exam, and obtaining a full license. A provisional license expires after four months. A provisional license will automatically expire if an applicant does not pass the oral exam.

5. A licensed marriage and family therapist or an associate marriage and family therapist must display the therapist's license and evidence of current renewal in a conspicuous place in the therapist's office or place of business or employment. Evidence of current renewal will be provided by the board upon renewal of the license. A duplicate license shall be issued to a licensee after the licensee requests a duplicate license from the board and the fee is paid.

History: Effective July 1, 2010; amended effective January 1, 2018; [April 1, 2024](#).

General Authority: NDCC 43-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-09

111-02-04-03. Reinstatement of license.

1. A license that has expired under subsection 5 of section 111-02-04-01 may be reinstated if:
 - a. No fact, circumstance, or condition exists which, if the license were reinstated, would justify its revocation or suspension;
 - b. The former licensee verifies that the former licensee has not engaged in the practice of marriage and family therapy in this state or any other jurisdiction, or used a title denoting marriage and family therapist since expiration of the license unless licensed by another jurisdiction. The verification must be accompanied by an affirmation that the statement is true and correct to the best knowledge and belief of the former licensee;
 - c. The former licensee submits to the board a completed application for reinstatement on a form provided by the board;
 - d. The former licensee pays the late fee specified in subsection 4 of section 111-02-04-01;
 - e. The former licensee includes with the application for reinstatement a letter stating the reasons for applying for reinstatement; and
 - f. The former licensee complies with the applicable provisions of subsections 2 and 3.
2. A former licensee whose license expired under subsection 5 of section 111-02-04-01 less than five years previous to the application for reinstatement must:
 - a. Submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired; and

- b. Pay the late fee specified in subsection 4 of section 111-02-04-01, for each of the years between the date the license expired and the date the former licensee submits a reinstatement application.
3. A former licensee whose license expired under subsection 5 of section 111-02-04-01 five years or more before the application for reinstatement must:
 - a. Retake the written examination required for licensure of marriage and family therapists given by the board according to section 111-02-03-02;
 - b. Submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired; and
 - c. Pay the late fee specified in subsection 4 of section 111-02-04-01 for each of the five years immediately preceding application for reinstatement.
 4. A former licensee whose license expired under subsection 5 of section 111-02-04-01 and who has actively been practicing in another state under an equivalent marriage and family license, before applying for reinstatement:
 - a. Shall submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired;
 - b. Shall pay the licensure renewal fee and an additional one-hundred-dollar reinstatement fee;
 - c. Shall provide documentation from the marriage and family therapy licensure board of the former licensee's current state of licensure to demonstrate the former licensee's license is current and in good standing; and
 - d. May not have any pending or unresolved board investigations or complaints.
 5. A former licensee who has engaged in the practice of marriage and family therapy in this state or used a title denoting marriage and family therapist since the date of expiration of the license is subject to denial of reinstatement or disciplinary action at the time of reinstatement. Nothing in this subsection precludes the board from seeking injunctive relief under applicable law for the unauthorized practice of marriage and family therapy or from referring the matter to criminal law enforcement officials.
 - ~~5.6.~~ Upon reinstatement, the licensee shall be assigned the same license number which the licensee was assigned before expiration of the license.

History: Effective July 1, 2010; amended effective April 1, 2024.

General Authority: NDCC ~~28-32-02,~~ 43-53-05

Law Implemented: NDCC 43-53-06

111-02-04-04. ~~Termination~~Surrender of license.

1. A license may be ~~terminated~~surrendered at any time upon written request by the licensee to the board, unless a complaint is pending against the licensee. If a complaint is pending against a licensee, a license may not be voluntarily ~~terminated~~surrendered until any indicated action relative to the complaint is concluded. The board must receive the request to ~~terminate~~surrender before expiration of the license for failure to renew under subsection 5 of section 111-02-04-01. A licensee who has voluntarily ~~terminated~~surrendered the license may be relicensed by complying with the requirements for reinstatement of an expired license in section 111-02-04-03, except that payment of the renewal fees shall not be required, unless the license has passed the original expiration date.

2. Involuntary ~~termination~~surrender of license. A license may be temporarily suspended by the board under North Dakota Century Code section 43-53-10.1 if after investigation of misconduct the board deems a licensee to be in violation of ethical and professional standards and disciplinary action proceedings are in process.

History: Effective July 1, 2010; amended effective January 1, 2018; [April 1, 2024](#).

General Authority: NDCC ~~28-32-02~~, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-10.1

TITLE 115
NORTH DAKOTA ETHICS COMMISSION

APRIL 2024

CHAPTER 115-02-01
COMPLAINT PROCESS

Section

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115-02-01-01. Definitions.

1. "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying.
2. "Complainant" means ~~a North Dakota resident~~ an individual who, verbally or in writing ~~or by other electronic means~~, submits a complaint to the commission and is:
 - a. A North Dakota resident;
 - b. Subject to licensing by a state agency or other public official subject to the jurisdiction of the ethics commission; or
 - c. A party to a quasi-judicial proceeding before a state agency or other public official subject to the jurisdiction of the ethics commission.
- ~~2.3.~~ "Confidential complaint" means a complaint ~~by a North Dakota resident~~ submitted through the confidential hotline or other methods designated by the commission as confidential.
- ~~3.4.~~ "Anonymous ~~or nonresident~~ complaint" means a complaint by a person who does not provide their name or contact information ~~or a nonresident~~ will not be considered a complainant for any purpose.

~~4-5.~~ "Executive director" is the individual appointed by the ethics commission as the executive director and authorized to carry out the duties and functions delegated by the ethics commission in these rules.

~~5-6.~~ "Respondent" means the individual or entity as defined by subsection 1 of North Dakota Century Code section 54-66-01 who is the subject of the complaint.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024.

115-02-01-03. Submission of a complaint.

1. Any individual may submit information to the North Dakota ethics commission alleging a violation of article XIV of the Constitution of North Dakota, related North Dakota laws, and rules or regulations adopted by the commission.
2. A complaint will be denied if there is not sufficient information to create a reasonable belief that a violation within the jurisdiction of the commission has occurred. Mere speculation is insufficient to proceed with a complaint.
3. The commission maintains a confidential whistleblower hotline for the submission of relevant information. Complaints and relevant information may be submitted to the commission through the hotline or through any other medium, i.e. written, oral, or electronic.
4. No specific format is required for complaints and relevant information.

5. A complaint is considered filed with the commission upon receipt of the complaint by the office of the commission.

~~5-6.~~ To enable the commission to more effectively evaluate and investigate a complaint, it is strongly recommended that the following information be provided:

- a. Name and contact information for the individual submitting the complaint or information must be provided;
- b. Clearly identify each person, entity, committee, or group that is alleged to have committed a violation;
- c. Clearly recite the facts that show specific violations under the commission's jurisdiction. Citations to the constitution, North Dakota law, or rules or regulations are not required but helpful. The individual submitting the complaint or information should be as specific as possible as it relates to dates, times, and individuals involved;
- d. Differentiate between statements based on the individual's personal knowledge and those based on information and belief. Statements not based on the individual's personal knowledge should identify the source of the information, if known; and
- e. Include any and all documentation supporting the allegations, if available.

~~6-7.~~ The executive director shall conduct an initial review of any complaint or information received by the commission.

- a. If the executive director determines that the matter falls within the jurisdiction of the commission and contains sufficient information to believe a violation has occurred, the executive director shall prepare a written summary of the complaint along with a notice to the respondent.
- b. The executive director may summarily dismiss the complaint if the alleged violation:

- (1) Does not fall within the commission's jurisdiction;
 - (2) Is insufficient to identify a possible violation; or
 - (3) Fails to comply with the rules adopted by the commission.
- c. The complainant may appeal the decision to summarily dismiss a complaint to the commission by appealing in writing within twenty calendar days of the notice by the executive director.
 - d. If the executive director determines that the matter falls within the jurisdiction of another agency, the executive director may refer the complainant to the relevant agency.
 - e. If the matter contains allegations of criminal conduct, the matter shall be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution the commission will take no further action on the complaint until resolved. If the law enforcement agency declines a referral for prosecution the commission will proceed with the complaint process. Absent rejection by the referring entity, the executive director shall inform the complainant and respondent as soon as reasonably possible by registered mail of a referral and the nature of the referred allegations.
 - f. If the commission receives an anonymous complaint that contains documentary or real evidence of possible criminal conduct, the commission may refer the matter to the appropriate law enforcement agency as provided under North Dakota ~~century~~
Code Century Code section 54-66-08, and may not otherwise divulge the documentary or real evidence.

~~7-8.~~ The executive director shall report all summarily dismissed or referred complaints and report to the commission at the commission's next regular meeting. The commission shall consider any appeals of a summarily dismissed complaint and vote to either reopen or deny the appeal. The commission shall ratify or direct reopening the actions of the executive director.

History: Effective June 17, 2020; amended effective July 28, 2021; June 23, 2022; April 1, 2024.

115-02-01-04. Notice to respondents.

1. The respondent over whom the commission has jurisdiction shall be informed of any complaint that the commission receives ~~that is not summarily dismissed~~. The executive director shall prepare the notice which shall include the identity of the complainant who submitted the complaint unless the complaint or information was submitted confidentially. The ethics commission may not release a confidential complainant's name and address to the accused individual without the authorization of the complainant. If the confidential complainant is a witness to an alleged offense and does not authorize release of the complainant's name and address to the accused individual, the statement of the complainant may not be used as evidence of a violation. The notice shall include the written complaint or written summary of the complaint. The respondent will receive a copy of all evidence and witness statements ~~to include names~~ included with the complaint.
2. Notice to the respondent shall be provided as soon as reasonably possible but no later than ~~twenty~~ thirty calendar days after the complaint ~~or relevant information~~ was received by the commission.
3. The respondent may respond to the complaint within ~~twenty~~ thirty calendar days of ~~receipt~~ notice of the complaint or ~~summary of the complaint~~ after the commission requests a response. In the executive director's discretion, the respondent may be granted an extension of time to provide any written response to the complaint or summary of the complaint.

4. If a complaint is summarily dismissed prior to the executive director notifying the respondent of a complaint, notice to the respondent shall include notice of the summary dismissal.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024.