

**TITLE 23  
HEALTH AND SAFETY**

**CHAPTER 23-01  
STATE DEPARTMENT OF HEALTH**

**23-01-01. State department of health - Officers.**

The state department of health consists of a health council, a state health officer, section chiefs, directors of divisions, and other employees of the department.

**23-01-01.1. State department of health to replace state department of health and consolidated laboratories.**

Wherever the terms "North Dakota state department of health", "department of health", "health department", "state department of health and consolidated laboratories", "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health" must be substituted therefor.

Wherever the terms "state food commissioner and chemist" and "commissioner" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18, the term "state department of health" must be substituted therefor.

**23-01-01.2. State department of health designated primary state environmental agency.**

The state department of health is the primary state environmental agency.

**23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.**

The health council consists of eleven members appointed by the governor in the following manner: four persons from the health care field, five persons representing consumer interests, one person from the energy industry, and one from the manufacturing and processing industry. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive sixty-two dollars and fifty cents as compensation per day and their necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

**23-01-02.1. Hospital utilization committees - Internal quality assurance review committees - Reports - Immunity.**

Repealed by S.L. 1997, ch. 234, § 5.

**23-01-03. Powers and duties of the health council.**

The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.

2. Make rules and regulations for the government of the council and its officers and meetings.
3. Establish standards, rules, and regulations which are found necessary for the maintenance of public health, including sanitation and disease control.
4. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records. No rule may be adopted with respect to building construction of existing medical hospitals or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.
5. Hold hearings on all matters brought before it by applicants and licensees of medical hospitals with reference to the denial, suspension, or revocation of licenses and make appropriate determination as specified herein.

The council may direct the state health officer to do or cause to be done any or all of the things which may be required in the proper performance of the various duties placed upon the state department of health.

**23-01-03.1. Newborn metabolic and genetic disease screening tests.**

The health council may authorize the use of newborn metabolic and genetic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected.

**23-01-03.2. Duties of the health council.**

The health council shall:

1. Monitor overall health care costs and quality of health care in the state.
2. Recommend to the appropriate interim legislative committees changes to the health care system in the state.
3. Publish an annual report on health care in the state.

**23-01-03.3. Long-term care nursing scholarship and loan repayment grant program.**

1. The state health council, in cooperation with the North Dakota long term care association, shall administer the long-term care nursing scholarship and loan repayment grant program. The purpose of the program is to provide matching funds to nursing facilities for the facilities to use in recruiting and retaining nurses by providing scholarships to nursing facility staff and other individuals to obtain a nursing education and by assisting in the repayment of student loans for licensed nurses employed in a nursing facility. The state health council shall adopt rules necessary to administer the program, including rules establishing criteria regarding eligibility for and distribution of program grants.
2. An applicant for a program grant shall establish that the applicant:
  - a. Is a licensed nursing facility;
  - b. Has available matching funds equal to the amount of the grant request; and
  - c. Meets the eligibility criteria established by rule.
3. An eligible applicant may receive a program grant not exceeding five thousand five hundred dollars in the first year of the biennium. Any funds appropriated by the legislative assembly for the grant program which are remaining after the first year of the biennium may be distributed to eligible applicants in the second year of the biennium in any amount determined by the state health council.

#### **23-01-04. Effect of rules and regulations.**

All rules and regulations promulgated by the health council under the powers granted by any provisions of this title are binding upon all county and municipal health officers, and upon all county, municipal, and private medical hospitals and upon related institutions, and have the force and effect of law.

##### **23-01-04.1. Rulemaking authority and procedure.**

1. Except as provided in subsection 2, no rule which the state department of health, hereinafter the department, adopts for the purpose of the state administering a program under the federal Clean Air Act, federal Clean Water Act, federal Safe Drinking Water Act, federal Resource Conservation and Recovery Act, federal Comprehensive Environmental Response, Compensation and Liability Act, federal Emergency Planning and Community Right to Know Act of 1986, federal Toxic Substances Control Act, or federal Atomic Energy Act of 1954, may be more stringent than corresponding federal regulations which address the same circumstances. In adopting such rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if it makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within nine months of the filing of the petition.
4. All existing rules of the department remain in full force and effect after July 10, 1989, pending department review and revision under subsection 3.
5. Any person who is issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent that the department's rule violates this section by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this section.
6. The provisions of this section may not be construed so as to require the department to review and propose revisions to any existing rule regarding the collection of fees by the department in connection with the administration of any program identified in subsection 1.

##### **23-01-04.2. Legislative intent - Health vaccination charges.**

It is the intent of the legislative assembly that the state department of health adopt rules defining appropriate administration charges for vaccine provided by the department to physicians, private clinics, and hospitals.

##### **23-01-04.3. Alternative health care services pilot project - Application - Notice - Hearing - Approval - Duration.**

1. At any time that the health care needs of a city, township, or other geographic area are not being adequately met, any person may apply to the state health council for approval to conduct an alternative health care services pilot project. The application must address the need for and benefits of the pilot project. It must also contain a

- detailed description of the nature and scope of the project, quality control, organization, accountability, responsibility, and financial feasibility.
2. Upon receipt of an application under subsection 1, the state health council shall schedule a public hearing, send notice to all interested parties, and give public notice of the hearing by publication in the official newspaper of each county in the pilot project area. At the hearing, the council shall accept written and oral testimony. The council shall review the application and all testimony presented at the hearing and approve, disapprove, or modify and approve the application based on criteria established by the council. The criteria must address the availability and use of health personnel, facilities, and services.
  3. Notwithstanding any other provisions of law, upon approval of an application submitted under subsection 1, the state health council, in consultation with the state health officer and any other public or private entity consulted by the state health council, shall set the standards for the delivery of health care services by the pilot project. The standards may not adversely affect the state's participation in federal medicare and medicaid programs. No more than three separate projects may be operational at any time and no project may be operational for longer than five years.

**23-01-05. Health officer - Qualifications, salary, term, duties - Advisory committee.**

The governor shall appoint the state health officer who must have had substantive private or public administrative experience and demonstrated experience in the management of people. The state health officer is entitled to receive a salary commensurate with that person's training and experience. The governor shall set the salary of the state health officer within the limits of legislative appropriations to the department. The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business. The state health officer may not engage in any other occupation or business that may conflict with the statutory duties of the state health officer and holds office for a term of four years beginning January 1, 1993. The state health officer is the administrative officer of the state department of health. If the governor does not appoint as state health officer a physician licensed in this state, the governor shall appoint at least three licensed physicians recommended by the state medical association to serve as an advisory committee to the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. The term of the advisory committee coincides with the term of the state health officer. A committee member serves at the pleasure of the governor. The duties of the state health officer are as follows:

1. Enforce all rules and regulations as promulgated by the health council.
2. Hold public health unit boards of health responsible for enforcement of state rules, serve in an advisory capacity to public health unit boards of health, and provide for coordination of health activities.
3. Establish and enforce minimum standards of performance of the work of the local department of health.
4. Study health problems and plan for their solution as may be necessary.
5. Collect, tabulate, and publish vital statistics for each important political or health administrative unit of the state and for the state as a whole.
6. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions subject to the approval of the health council.
7. Collect and distribute health education material.
8. Maintain a central public health laboratory and where necessary, branch laboratories for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.
9. Establish a service for medical hospitals and related institutions to include licensing of such institutions according to the standards promulgated by the health council and consultation service to communities planning the construction of new hospitals and related institutions.
10. Comply with the state merit system policies of personnel administration.

11. Establish a program to provide information to the surviving family of a child whose cause of death is suspected to have been the sudden infant death syndrome.
12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
13. Make bacteriological examination of bodily secretions and excretions and of waters and foods.
14. Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.
15. Make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.
16. Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
17. From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.
18. Establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. No charge may be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.
19.
  - a. Establish a review process for instances in which the department is requested to conduct an epidemiological assessment of a commercial building. The epidemiological assessment must include:
    - (1) A statement of whether there are known environmental causes;
    - (2) If there are known environmental causes identified, a recommendation of how they can be remediated or mitigated; and
    - (3) If there are no known environmental causes identified, a statement that no known causes exist.
  - b. Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified environmental concern related to the epidemiological assessment is the burden of the building owner.

**23-01-05.1. Organ or tissue transplant assistance administration - Standing appropriation.**

The state health officer shall select a private nonprofit patient-oriented organization incorporated in this state for the purpose of administering financial assistance to organ or tissue transplant patients who are residents of this state. The state health officer shall adopt rules governing administration of this section. The organization selected shall administer and provide grants from available funds to alleviate demonstrated financial needs of transplant patients for any costs associated with transplant operations, under guidelines based on current social service eligibility requirements. There is hereby created as a special fund in the state treasury an organ transplant support fund, the principal and income of which is hereby appropriated to the organization selected under this section. The organization administering the fund may solicit contributions from private or governmental sources and such contributions may be deposited in the fund.

**23-01-05.2. Administration of epinephrine - Liability.**

1. The state health officer shall adopt rules to authorize a layperson to administer epinephrine to an individual who has a severe allergic reaction.

2. An individual authorized to administer epinephrine by the state health officer may obtain premeasured doses of epinephrine and the necessary paraphernalia for epinephrine administration from any licensed physician or pharmacist.
3. An individual authorized to administer epinephrine by the state health officer, and the employer of such an individual, is not civilly or criminally liable for any act or omission of that individual when acting in good faith while rendering emergency treatment to an individual who has a severe adverse reaction, except when the conduct amounts to gross negligence.

#### **23-01-05.3. Immunization data.**

1. The state department of health may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The state department of health may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
  - a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
  - b. The state department of health shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.

#### **23-01-05.4. Department to employ state forensic examiner - Qualifications - Duties.**

The state department of health may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession. The state forensic examiner shall:

1. Exercise all authority conferred upon the coroner under chapter 11-19.1 and any other law;
2. Consult with local coroners on the performance of their duties as coroners;
3. Conduct investigations into the cause of death of and perform autopsies on any deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;
4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary;
5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and
6. Perform other duties assigned by the state health officer.

#### **23-01-05.5. Autopsy reports - Confidential - Exceptions.**

1. As used in this section:

- a. "Autopsy report" means the report of the forensic examiner or the examiner's designee on the post-mortem examination of a deceased individual to determine the cause and manner of death, including any written analysis, diagram, photograph, or toxicological test results.
  - b. "Report of death" means the official findings on the cause of death and manner of death issued by the state forensic examiner, the examiner's designee, county coroner, or pathologist performing an autopsy ordered by a county coroner or by the state forensic examiner and which is the face page of the autopsy report identifying the decedent and stating the cause of death and manner of death.
2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is a public record subject to disclosure under section 44-04-18.
3. Subject to the limitations on the disclosure of an autopsy photograph or other visual image or video or audio recording of an autopsy required under section 44-04-18.18, any working papers and notes relating to a final autopsy report may be disclosed pursuant to a court order and as otherwise expressly provided by law.
4. The state forensic examiner or the examiner's designee shall disclose a copy of the autopsy report:
  - a. To any county coroner, including a coroner in any state or Canadian province, with jurisdiction over the death, and the coroner may use or disclose these records for purposes of an investigation, inquest, or prosecution.
  - b. To any state's attorney or criminal justice agency, including a prosecutor or criminal justice agency of the United States, any state, or any Canadian province, with jurisdiction over an investigation of the death and the state's attorney or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.
  - c. To workforce safety and insurance if the death is related to the decedent's work, and to any other workers' compensation or other similar program, established by law, that provides benefits for work-related injuries or illness without regard to fault if there is no criminal investigation.
  - d. To the child fatality review panel if there is no active criminal investigation.
  - e. In accordance with a court order.
5. The state forensic examiner or the examiner's designee upon request shall disclose a copy of the autopsy report to:
  - a. The decedent's personal representative and to the decedent's spouse, child, or parent, upon proof of the relationship, if there is no active criminal investigation.
  - b. A physician or hospital who treated the deceased immediately prior to death if there is no active criminal investigation.
  - c. An insurance company upon proof that the decedent's life was covered by a policy issued by the company if there is no active criminal investigation.
  - d. The food and drug administration, the national transportation safety board, the occupational health and safety administration, and any other federal or state agency with authority to obtain an autopsy report to investigate a death resulting from the decedent's type of injury or illness.
  - e. A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a limited data set under title 45, Code of Federal Regulations, part 164, section 514, subsection e have been removed from the report.
6. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, or other information relating to an autopsy report or cause of death to a person who the public official or employee reasonably believes is entitled to that information under this section is immune from any liability, civil or criminal, for making that disclosure. For the purposes of any proceeding, the good faith of any public employee who makes a disclosure under this section is presumed.

**23-01-06. Biennial report - Contents.**

The state health officer shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must cover the following subjects:

1. The activities of the various divisions, the work accomplished during the two years covered by the report, and an analysis of the program of each of the divisions.
2. The expenditures of the state department of health.
3. The expenditures in each county board of health or the district board of health.
4. Any reports relating to the hospital program as required by the health council.

**23-01-07. Structure of department.**

Repealed by S.L. 1993, ch. 218, § 10.

**23-01-08. Directors of divisions - Deputy - Appointment, salary, duties.**

The state health officer shall appoint directors of the various divisions of the department and shall determine the salary, within the limits of legislative appropriations to the department and in conformity with the state merit system, to be received by such persons. The duties of such director must be those prescribed by the state health officer. The state health officer may appoint a deputy state health officer. A deputy state health officer who does not hold a health-related degree may not individually issue an order regarding public health unless the order is cosigned by a physician who is employed by the department or cosigned by the state epidemiologist. The deputy state health officer serves at the pleasure of the state health officer.

**23-01-09. Duties of director of consolidated laboratories branch.**

Repealed by S.L. 1993, ch. 218, § 10.

**23-01-09.1. Duties of state toxicologist.**

Repealed by S.L. 2003, ch. 469, § 13.

**23-01-10. Office space.**

The state shall provide suitable office space in Bismarck for housing and maintaining the state department of health. Special fireproof vaults must be provided for the storage of birth and death certificates.

**23-01-11. Acceptance of funds and right to qualify for benefits under federal laws authorized.**

The state department of health may:

1. Accept funds from cities, counties, the federal government, private organizations, and individuals for infancy and maternal hygiene, for other public health work and for the purpose of conducting a survey of existing medical hospitals and related institutions, planning of needed hospital construction and for construction and maintenance of such medical hospitals and related institutions. When approved by the governor of this state, the state department of health may match the same from any unexpended portion of its appropriation in accordance with specifications agreed to or required by congressional act. All infancy and maternal hygiene and public health work must be done under the supervision of the state department of health.
2. Adopt rules necessary to enable the state to be in compliance with any federal laws in order to qualify for any federal funds related to medical facilities or agencies licensed by the state department of health.

**23-01-12. Hospital records to be kept at direction of state health officer.**

When any person is admitted into a lying-in hospital or other institution, public or private, to which persons resort for the treatment of disease or for confinement, or to which persons are committed by process of law, the superintendent, manager, or other person in charge of such institution shall make a record of all the personal and statistical particulars relative to such

person. The record must be in such form as is directed by the state health officer. In the case of any person admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the records the nature of the disease and where, in the physician's opinion, it was contracted. The personal particulars and information required for compliance with the provisions of this section must be obtained from the individual personally if practicable, and when the information cannot be obtained from the individual, from the individual's relatives or friends or from any other person acquainted with the facts.

**23-01-13. Blood plasma - Obtaining, storing, and distributing.**

Repealed by S.L. 1991, ch. 263, § 1.

**23-01-14. State department of health authorized to transfer future accumulated fees.**

As a continuing policy, the state department of health may automatically from time to time transfer unclaimed fees on deposit with the Bank of North Dakota or other authorized depository to the state general fund when the unclaimed status has existed for a period of at least three years.

**23-01-15. Research studies confidential - Penalty.**

1. All information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the state department of health, in connection with studies conducted by the state department of health, or carried on by the department jointly with other persons, agencies, or organizations, or procured by such other persons, agencies, or organizations, for the purpose of reducing the morbidity or mortality from any cause or condition of health is confidential and must be used solely for the purposes of medical or scientific research.
2. Such information, records, reports, statements, notes, memoranda, or other data is not admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. Such information, records, reports, statements, notes, memoranda, or other data may not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the state department of health, nor by any other person, except as may be necessary for the purpose of furthering the research project to which they relate. No person participating in such research project may disclose, in any manner, the information so obtained except in strict conformity with such research project. No officer or employee of said department may interview any patient named in any such report, nor a relative of any such patient, unless the consent of the attending physician and surgeon is first obtained.
3. The furnishing of such information to the state department of health or its authorized representative, or to any other cooperating agency in such research project, does not subject any person, hospital, sanitarium, rest home, nursing home, or other person or agency furnishing such information, to any action for damages or other relief.

**23-01-16. Dairy products - Joint standards.**

The state department of health and the dairy department of the department of agriculture shall jointly adopt a set of uniform standards in relation to all matters falling within their joint jurisdiction regarding dairy products. The state department of health, district health units, municipal health departments or units, and the dairy department shall each be permitted to accept any inspection report of the other department or unit regarding the inspection of dairy products and the producers and processors of such products, when such report is based substantially upon standards conforming with the milk ordinance and code recommended by the United States public health service.

**23-01-17. Noise harmful to health and safety - Power to regulate - Hearings - Appeal - Penalty - Injunction.**

Repealed by S.L. 1991, ch. 264, § 1.

**23-01-18. State department of health responsible for control of rabies.**

Repealed by S.L. 1999, ch. 243, § 2.

**23-01-19. Extermination of rabies.**

Repealed by S.L. 1999, ch. 243, § 2.

**23-01-20. Traumatic head injury defined.**

Repealed by S.L. 1999, ch. 231, § 1.

**23-01-21. Central registry of traumatic head injury - Establishment - Reports.**

Repealed by S.L. 1999, ch. 231, § 1.

**23-01-22. Department to employ waste management facility inspectors.**

The state department of health shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23-29-10 and 23-29-11.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislative appropriation.

**23-01-23. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57.**

A permit hearing conducted for purposes of receiving public comment or an investigatory hearing conducted under chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, and 61-28.1 is not an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of chapter 54-57.

**23-01-24. Health care cost and quality review program - Penalty.**

The department of health shall conduct a continuous program to review and improve the quality of health care in the state. The department may contract with a qualified person or organization to develop and implement the program. The department shall use the program to compile relevant information about the quality of health care in this state which will allow the department to evaluate the cost, quality, and outcomes of health care. The department shall establish and consult a provider advisory committee composed of health care providers regarding the data that is a cost-effective process for collecting and evaluating the information. The state health officer may assess against a provider a penalty of one hundred dollars per day for each day the provider willfully refuses to provide the department with information requested for use with the program, but the penalty may not exceed one thousand dollars for each request. A provider against whom a fee is assessed may appeal that assessment to the state

health council. If the provider fails to pay the penalty, the health council may, in the county where the provider's principal place of business is located, initiate a civil action against the provider to collect the penalty. As used in this section, "provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or professional practice. The department shall ensure that patient privacy is protected throughout the compilation and use of the information. The department shall evaluate data management capabilities in the state and shall organize its capabilities to provide information about the cost of care on an individual provider basis as well as a collective basis.

**23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.**

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13.1, 19-18, or 19-20.1 must be performed by the state department of health for the agriculture commissioner at no charge.

**23-01-26. State department of health - Indirect cost recoveries.**

Notwithstanding section 54-44.1-15, the state department of health may deposit indirect cost recoveries in its operating account.

**23-01-27. Donated dental services program.**

The state department of health shall contract with the North Dakota dental association, or other appropriate and qualified organizations, to develop and administer a donated dental services program through which volunteer dentists provide comprehensive dental care for needy, disabled, aged, or medically compromised individuals. The volunteers will treat individuals through the program and, with the exception of certain dental laboratory costs, will fully donate their services and supplies. The contract must specify the responsibilities of the administering organization and include:

1. Establishment of a network of volunteer dentists, including dental specialists, volunteer dental laboratories, and other appropriate volunteer professionals to donate dental services to eligible individuals;
2. Establishment of a system to refer eligible individuals to appropriate volunteers;
3. Development and implementation of a public awareness campaign to educate eligible individuals about the availability of the program;
4. Provision of appropriate administrative and technical support to the program; and
5. Submission of an annual report to the state department of health that:
  - a. Accounts for all program funds;
  - b. Reports the number of individuals served by the program and the number of dentists and dental laboratories participating as providers in the program;
  - c. Includes any other information required by the state department of health; and
  - d. Performs, as required by the state department of health, any other duty relating to the program.

**23-01-28. Combined purchasing with local public health units - Continuing appropriation.**

The state department of health may make combined or joint purchases with or on behalf of local public health units for items or services. Payments received by the state department of health from local public health units pursuant to a combined or joint purchase must be deposited in the operating fund and are appropriated as a standing and continuing appropriation to the state department of health for the purpose of this section.

**23-01-29. Bone marrow donor education.**

The state department of health shall provide information and educational materials to the public regarding bone marrow donation through the national marrow donor program. The department shall seek assistance from the national marrow donor program to establish a

system to distribute materials, ensure that the materials are updated periodically, and address the education and recruitment of minority populations.

**23-01-30. Zoning regulation of concentrated animal feeding operations - Central repository.**

The state department of health shall establish, operate, and maintain an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated animal feeding operations. The county auditor of a county and the township clerk of a township having a zoning regulation that pertains to concentrated animal feeding operations shall file the regulation with the state department of health for inclusion in the central repository.

**23-01-31. North Dakota health information technology steering committee.**

Repealed by S.L. 2009, ch. 519, § 6.

**23-01-32. Viral hepatitis program - Vaccination - Study.**

1. The state department of health shall establish and administer a viral hepatitis program with the goal of distributing to residents of the state who are at an increased risk for exposure to viral hepatitis information that addresses the higher incidence of hepatitis C exposure and infection among these populations, addresses the dangers presented by the disease, and provides contacts for additional information and referrals.
2. The department shall establish a list of classes of individuals by category that are at increased risk for viral hepatitis exposure. The list must be consistent with recommendations developed by the federal centers for disease control and prevention. The department shall determine the type of information the department will distribute under the program and the form and manner of distribution.
3. The department shall establish a vaccination and testing program, to be coordinated by the department through local public health units.

**23-01-33. Human papilloma virus - Information.**

The state department of health shall educate the public about the human papilloma virus and the availability of a human papilloma virus vaccine; promote immunization against the human papilloma virus; and distribute informational material regarding the human papilloma virus and the human papilloma virus vaccine. The department shall distribute the informational material through relevant department programs and divisions, including breast and cervical cancer control programs; immunization programs; family planning programs; and human immunodeficiency virus and sexually transmitted disease programs. Informational materials distributed must include the recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention; contain information relevant to the target populations of each of the participating programs and divisions distributing the informational material; and contain information regarding the availability of the vaccine through the vaccines for children program operated by the department under 42 U.S.C. 1396s, and the medical assistance program.

**23-01-34. Children with special health care needs - Program administration.**

The state department of health shall administer programs for children with special health care needs as may be necessary to conform to title 5, part 2, of the federal Social Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.], including providing services and assistance to children with special health care needs and their families and developing and operating clinics for the identification, screening, referral, and treatment of children with special health care needs.

**23-01-35. Tattooing, body piercing, branding, subdermal implants, or scarification - Permit - Fee - Adoption of rules - Exemptions - Injury reports.**

1. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, or scarification services without a permit issued by the department under this section. The holder of a permit shall display the permit in a conspicuous place at the facility for which the permit is issued. A permit issued under this section expires annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.
2. The health council shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, or scarification and may prohibit any practice that the health council deems unsafe or a threat to public health.
3. A facility is exempt from subsection 1 if the facility provides body piercing that is limited to the piercing of the noncartilaginous perimeter or lobe of the ear and the facility does not provide tattooing, branding, scarification, or subdermal implants. A person is exempt from regulation under subsection 2 if the person's practice under this section is limited to piercing of the noncartilaginous perimeter or lobe of the ear. A licensed health care professional acting within that professional's scope of practice and the associated medical facility are exempt from this section.
4. If a customer of a facility regulated under this section reports to the facility an injury the customer or operator of the facility believes to have resulted from the tattooing, body piercing, branding, subdermal implanting, or scarification provided at the facility, the operator of the facility shall provide the customer with written information on how to report the alleged injury to the state department of health. If a licensed health care professional treats a patient for an injury the professional determines, in the exercise of professional judgment, occurred as a result of a service regulated under this section, the professional shall report the circumstances to the state department of health. A licensed health care professional is immune from liability for making or not making a report under this subsection.
5. The fees established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

**23-01-36. Appeal from permit proceedings.**

An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or

permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

**23-01-37. Survey program - Health facilities construction or renovation projects.**

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with medicare-certified life safety surveys.

**23-01-38. Electronic drug prior authorization and transmission - Limitations.**

1. Effective August 1, 2013, a drug prior authorization request must be accessible to a health care provider with the provider's electronic prescribing software system and must be accepted electronically, through a secure electronic transmission, by the payer, by the insurance company, or by the pharmacy benefit manager responsible for implementing or adjudicating or for implementing and adjudicating the authorization or denial of the prior authorization request. For purposes of this section, a facsimile is not an electronic transmission.
2. Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including advertising, commercial messaging, and popup advertisements, to influence or attempt to influence through economic incentives the prescribing decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy. Any electronic communication sent to the prescriber, including advertising, commercial messaging, or popup advertisements must be consistent with the product label, supported by scientific evidence, and meet the federal food and drug administration requirements for advertising pharmaceutical products.
3. Electronic prescribing software may show information regarding a payer's formulary if the software is not designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

**23-01-39. Immunization program - Provider choice - Purchasing.**

1. As used in this section:
  - a. "Department" means the state department of health.
  - b. "North Dakota immunization advisory committee" means the group of private health care providers, local public health units, department staff, and other applicable individuals which makes immunization and vaccine selection recommendations to the North Dakota immunization program.
  - c. "North Dakota immunization program" means the program administered by the department to provide vaccinations to North Dakota children consistent with state and federal law.
  - d. "Program-eligible child" means any child, who is under nineteen years of age, whose custodial parent or legal guardian resides in this state.
  - e. "Vaccine" means any vaccine recommended by the federal advisory committee on immunization practices of the centers for disease control and prevention.

- f. "Vaccines for children program" is a federally funded program that provides vaccines at no cost to eligible children pursuant to section 1928 of the Social Security Act [42 U.S.C. 1396s].
- 2. As part of the North Dakota immunization program:
  - a. The department shall implement a provider choice system as part of the state's implementation of the vaccines for children program. This provider choice system must provide a health care provider participating in the state's vaccines for children program or in any other immunization program for children, adolescents, or adults which is administered through the state using federal or state funds, may select any licensed vaccine, including combination vaccines, and any dosage forms that have in effect a recommendation from the federal advisory committee on immunization practices. This subsection does not apply in the event of a disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.
  - b. The department shall establish a program through which the department purchases vaccines through the federal vaccine purchasing contract.
    - (1) The department shall supply public health units with the purchased vaccines. A public health unit that receives vaccines under this subdivision shall administer the vaccines to program-eligible children.
    - (2) A public health unit that receives vaccines under this purchasing program may not bill an insurer for the cost of the vaccine but may charge an administration fee.
    - (3) The department shall fund this purchasing program through participation in the vaccines for children program, the federal section 317 vaccine program, and state funds appropriated for this purpose. If it appears there will be inadequate funds to fund this purchasing program, the department shall petition the emergency commission for a transfer from the state contingency fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, to fund this purchasing program.