TITLE 8

STATE BOARD OF ARCHITECTURE

JANUARY 2014

CHAPTER 8-01-01
ORGANIZATION OF BOARD

Section
8-01-01-01 Organization of State Board of Architecture and Landscape Architecture

8-01-01-01. Organization of state board of architecture and landscape architecture.

1. **History.** The 1917 legislative assembly passed architectural practice legislation which is codified as North Dakota Century Code chapter 43-03. This chapter requires the governor to appoint a state board of architecture:

   a. To adopt rules to govern its proceedings.

   b. For the examination of candidates for registration.

   c. For the regulation of the practice of architecture and landscape architecture. The board's purpose is to protect the public health, safety, and welfare against incompetent and unscrupulous practice.

   ~~d. The 2003 legislative assembly enacted landscape architectural registration laws codified in North Dakota Century Code chapter 43-03. This chapter requires the state board of architecture to appoint a landscape architect advisory committee and architect advisory committee to assist in the implementation and coordination of landscape architects' regulation. The committee must consist of three landscape architects and three architects.~~

2. **Board membership.** The board consists of three members appointed by the governor. A member must be an architect registered in North Dakota who has been a resident of, and in active practice as a principal in, this state for at least ~~three~~ five years prior to appointment.

3. **Terms of office.** Each member is appointed for a term of six years, with terms arranged so that one term expires on March fourteenth of each odd-numbered year.

4. **Qualifications and removal.** Each member qualifies by taking the oath of office required of civil officers. The governor may remove a member for inefficiency or neglect of duty.

5. **Officers.** The board elects a president and secretary, who shall also be treasurer, at a regular meeting each year.

6. **Secretary-treasurer's duties.** The secretary-treasurer:

   a. Records all business of the board at its meetings and keeps all records.

   b. Collects all fees, deposits all moneys to the board account, and makes all disbursements for board expenses.

   c. Receives all applications for registration and examinations, receives and answers all correspondence, and maintains files of all communications received and sent, including copies of those by other members.

   d. ~~Maintains a roster of current registrants and annually publishes and distributes the roster to all registrants and to other persons and agencies as the board determines.~~ Maintains a list of architects and landscape architects certified under this chapter. This list of certificate holders must contain each certificate holder's name, current business address, certification number, and the expiration date of the certificate.

7. **Board records - Seal.**

   a. Records. Records are open to the public when information is of a general nature. Records and correspondence of a personal nature concerning an individual or firm, such as examination documents, correspondence, financial disclosures, and the like, are confidential and are available only to the board, its counsel, and to the individual or firm itself.

   b. Seal. The board has adopted a seal for its use. The seal is affixed to certificates of registration, renewal cards, and legal documents, over signatures of the members.

8. **Meetings.** The board holds regular meetings ~~on the first Monday of April and October~~ at least once each year, with the date and location set by the board. The board may meet as designated by a majority of the board. ~~Special meetings may be held as necessary. Postponement,~~

~~when necessary, is agreed to by at least two members, and is to a date certain.~~

a. Notice. The ~~secretary~~ executive director shall notify each member in writing at least five days in advance of any special meeting. Should an applicant or other person wish to be present at a special meeting, a request shall be made in writing to the ~~secretary~~ executive director or other member, in time for the ~~secretary~~ executive director to give at least ten days' notice to the applicant or other person.

b. Quorum. A quorum shall consist of two members.

c. Presiding officer. The president shall preside at all meetings. In the president's absence, the senior member present shall preside.

d. Open meetings. All meetings shall be open to the public.

e. When meetings not required. Routine business, such as review of applications for registration, may be conducted by mail or electronically, when it is in the applicant's and the public's interest. Copies of all correspondence relating to any business conducted outside meetings shall be filed with the ~~secretary~~ executive director.

9. **Compensation of members and expenses of board.**

a. Limit. The expenditures of the board shall at no time exceed the amount of moneys on deposit to the credit of the board.

b. Audit. The board accounts shall be audited annually by an independent auditing firm whose members are authorized by law to perform auditing services in North Dakota, and a report of the audit shall be furnished to all members of the board and filed in accordance with state law.

c. ~~Separate fund - vouchers~~ Bank account. All fees and other income collected by the board shall be deposited ~~by the secretary-treasurer in a separate account~~ in a bank authorized to do business in North Dakota. The account shall be drawn against only for expenses of the board~~, upon properly drawn vouchers signed by the secretary-treasurer~~.

d. ~~Secretary's salary - members' per diem. The secretary's salary shall be fixed by board resolution at a regular meeting. The other members shall receive twenty-five dollars per day, or portion thereof, spent in discharge of their duties when away from their~~

~~practices.~~ Reserve accounts. At the discretion of the board reserve accounts may be established.

e. ~~Travel and other expenses. Each member shall receive such travel and other actual expenses as are legitimately incurred in the performance of official duties. Official duties shall include board meetings, attendance as delegates to regional and national meetings of the national council of architectural registration boards, meetings with other professional boards, meetings at which candidates for registration are examined, and whenever attendance of board members is required by a court or other higher authority. Actual expenses incurred by board members for telephone, postage, and the like, in their official duties, shall be reimbursed as provided in subdivision c.~~ Executive director. If the board appoints or contracts an executive director, the executive director is entitled to receive such fee as fixed by a resolution of the board adopted at a regular meeting, and is entitled to receive reimbursement for travel, lodging, and other expenses as are incurred in the performance of the executive director's official duties.

f. Members. Each member of the board is entitled to receive a per diem of seventy-five dollars for each day or portion of a day spent in the discharge of the members, such mileage as is provided for by North Dakota Century Code section 54-06-09, and is entitled to reimbursement for the member's actual and necessary expenses incurred in the discharge of the member's official duties.

~~f.~~ g. Other expenses. The ~~secretary-treasurer~~ board or its designee shall pay office rental, ~~stenographic~~ clerical, legal, auditing, printing, and all other legitimate expenses of the board from board funds.

10. **Counsel.** The board may, at its expense, employ as legal counsel an attorney who has been admitted to practice in North Dakota. When approved and appointed by the attorney general as "special assistant attorney general", the board attorney shall represent that office in all matters relating to the regulation of the practice of architecture and landscape architecture within the scope of North Dakota Century Code chapter 43-03.

11. **Inquiries.** Inquiries regarding the board, registration, examinations, or practice shall be addressed to the ~~secretary at the following address:~~ executive director in care of the state board of architecture and landscape architecture.

~~State Board of Architecture~~
~~P.O. Box 7370~~

~~Bismarck, ND 58507-7370~~

History: Amended effective October 1, 1989; February 1, 2005; January 1, 2014.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

CHAPTER 8-02-01

8-02-01-01. Practice. The practice of architecture and landscape architecture exists for the performance of personal services to the public by architects and landscape architects. It has as its premise the duty of the architect and landscape architect to employ the architect's and landscape architect's training, experience, and skill in the design and execution of buildings and their environments in order to safeguard ~~life, health, and property and to promote the public welfare~~ the public health, safety, and welfare. The latter includes the application of aesthetic principles to the technology of building.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-01-02. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 43-03, ~~except~~ and as further provided herein:

1. "Architect" means, in general, a person who has qualified by skill, training, experience, and professional attitude to practice architecture, and is registered as an architect. Specifically, architect means an architect registered, and thereby entitled to practice architecture, in North Dakota.

2. "Architectural commission" means the employment of an architect to perform architectural services.

3. "Architectural project" means a building, or group of buildings, or a portion thereof, together with the site, the design, planning, or improvement of which requires the services of an architect.

4. "Architectural services" means those services normally and customarily performed by an architect including~~, but not limited to~~:

   a. Offering or solicitation of, and contracting for, architectural services.

   b. Consultation, investigation, analysis, studies, reports, programming, designing, and planning of buildings and their environments.

   c. Sketches, drawings, specifications, and other graphic instruments of service in connection with architectural projects.

   d. Observation of construction of architectural projects, together with other duties of the architect normally associated with administration of contracts for construction.

Architectural services include the structural and environmental systems and equipment which are essential to the proper functioning of an architectural project.

5. "Board" means the state board of architecture and landscape architecture.

~~5.~~ 6. "Business corporation" means a corporation which is chartered under statutes other than North Dakota Century Code chapter 10-31.

~~6.~~ 7. "CLARB" means the council of landscape architectural registration boards, of which the board is a member.

~~7.~~ 8. "CLARB certificate" means certification by CLARB that a landscape architect has met the minimum standards of education, examination, experience, and professional conduct established by the council and is thereby recommended for licensure in all member jurisdictions.

~~8.~~ 9. "CLARB council record" means verified documentation of an individual's education, experience, examination, licensure, and professional conduct compiled by CLARB.

~~9.~~ 10. "CLARB standards of eligibility" means standards for education, experience, examination, and professional conduct that are approved by CLARB's member boards and recommended to all member boards as the minimum standards for licensure.

~~10.~~ 11. "CLARB written examination" means the licensure examination for landscape architects prepared by CLARB.

~~11.~~ 12. "Exemptions" means persons to whom the provisions of this title and North Dakota Century Code chapter 43-03 do not apply.

~~12.~~ 13. "Landscape architect" means, in general, a person who has qualified by skill, training, experience, and professional attitude to practice landscape architecture and is registered as a landscape architect. Specifically, landscape architect means a landscape architect registered and thereby entitled to practice landscape architecture in North Dakota.

~~13.~~ 14. "Landscape architectural project" means the site, the design, planning, or improvement of which requires the services of a landscape architect.

~~14.~~ 15. "Landscape architecture" means a service in which landscape architectural education, training, and experience and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, design, and administration of contracts relative to projects principally directed at the functional and aesthetic use and preservation of land. The term includes performing

any professional service in connection with the development of land areas where the dominant purpose of the service is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches, or environment for structures or other improvements, and the consideration and determination of inherent problems of the land relating to erosion, wear and tear, blight, and hazards. This practice includes the location and arrangement of tangible objects and features incidental and necessary to the purposes outlined but does not include the design of structures or facilities with separate and self-contained purposes, as ordinarily included in the practice of engineering or architecture, or the preparation of boundary surveys or final land plats, as ordinarily included in the practice of land surveying.

~~15.~~ 16. "NCARB" means the national council of architectural registration boards, of which the board is a member.

~~16. "Nonarchitect principal" means a professional registered in North Dakota who is either a general partner in a partnership or a director in a professional corporation which is engaged in the practice of architecture.~~

~~17. "Practice" means the performance of, or offer to perform, architectural services, or landscape architectural services, for the public.~~

~~18.~~ 17. "Principal" means an architect or a landscape architect who is either a sole proprietor, a general partner in a partnership, or a director in a professional service corporation, and such firm is engaged in the practice of architecture or landscape architecture. "Principal" also means an architect or a landscape architect who shares in the losses as well as the profits of the firm, and controls, alone or in concert with other architects who are principals, the architectural practice of the firm.

~~19.~~ 18. "Professional corporation, professional limited liability company, or professional limited liability partnership" means an entity chartered under North Dakota Century Code chapter 10-31 to engage in the practice of architecture or landscape architecture.

~~20.~~ 19. "Reciprocity" means the process by which the board grants registration without further examination to a person who is registered to practice architecture or landscape architecture in another state or jurisdiction, and who holds national council of architectural registration board certification, or to a person who is registered to practice landscape architecture in another state or jurisdiction and who holds council of landscape architectural registration board certification.

~~21.~~ 20. "Registration" means a license issued by the board to a person who has qualified as an architect, or landscape architect, and is thereby entitled to practice.

21. "Stamp" means architectural or landscape architectural stamp may also be referred to as a seal, emboss, electronic-generated seal, or indicia.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-02-02
EXEMPTIONS

Section	
8-02-02-01	Own Use [Repealed]
8-02-02-02	Public Buildings [Repealed]
8-02-02-03	Employee of an Architect or Landscape Architect
8-02-02-04	Shop Drawings
8-02-02-05	Federal Projects
8-02-02-06	Exemptions

8-02-02-01. Own use. ~~A person constructing a building for one's own use is exempt from North Dakota Century Code chapter 43-03 under subsections 1 and 2 of North Dakota Century Code section 43-03-02. This exemption shall not be construed to permit the offering or performance of architectural services by unregistered persons or entities to the public, nor to permit design-build firms or entities to practice architecture.~~ Repealed effective January 1, 2014.

General Authority: ~~NDCC 43-03-08~~
Law Implemented: ~~NDCC 43-03-02~~

8-02-02-02. Public buildings. ~~A person preparing plans, drawings, and specifications for public buildings costing less than twenty-five thousand dollars, or buildings for the use of the North Dakota agricultural experiment station, is exempt from North Dakota Century Code chapter 43-03 under the provisions of North Dakota Century Code section 48-02-02.~~ Repealed effective January 1, 2014.

General Authority: ~~NDCC 43-03-08~~
Law Implemented: ~~NDCC 43-03-02~~

8-02-02-03. Employee of an architect or landscape architect. An employee of an architect or landscape architect is exempt from North Dakota Century Code chapter 43-03 under subsection 5 of North Dakota Century Code section 43-03-02. This exemption shall not be construed to permit an employee to perform services which, because of their importance to the client's and the public's interest, require the presence of the principal, such as solicitation of and contracting for architectural or landscape architectural services, negotiations or discussions involving substantial design or cost impacts, and other services of similar responsibility which are normally performed by the architect or landscape architect.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-02

8-02-02-04. Shop drawings. A person preparing shop drawings or other graphic instruments, the purpose of which is to carry out the architect's or landscape architect's design intent, and which are subject to the architect's

or landscape architect's approval, is exempt from North Dakota Century Code chapter 43-03.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-02-05. Federal projects. A person in the employ of, or commissioned by, a United States government agency, who performs architectural or landscape architectural services for a project to be owned and used by the federal government, and to be built with federally appropriated funds is exempt from North Dakota Century Code chapter 43-03. This exemption shall not be construed to permit nonregistered persons to perform architectural or landscape architectural services for a project for which the federal government is merely the lender or guarantor.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-02-06. Exemptions. Nothing in this chapter shall be construed to prevent:

1. Preparation of plans, drawings, and specifications for public buildings costing less than the amount stipulated in North Dakota Century Code section 48-01.1-04 or buildings for the use of the North Dakota agricultural experiment station under the provisions of North Dakota Century Code section 48-01.1-04.

2. The preparation of submissions to architects or landscape architects by the manufacturer, supplier, or installer of materials, assemblies, components, or equipment incidental to the design of the entire project that describe or illustrate the use of such items.

3. The preparation of any details or shop drawings required of the contractor by the terms of the construction documents.

4. The management of construction contracts by persons customarily engaged in contracting work.

5. The preparation of technical submissions or the administration of construction contracts by persons acting under the responsible control of a registered architect or landscape architect.

~~6. Officers and employees of the United States of America from engaging in the practice of architecture as employees of the United States of America.~~

~~7.~~ 6. A partnership, limited liability company, or professional corporation from performing or holding itself out as able to perform any of the services involved in the practice of architecture or landscape architecture; provided that any agreement to perform such services shall be executed on behalf of the partnership, limited liability company, or professional corporation by the general partner or partners, or by the manager or managers, or by the director or directors who hold registration in this state and who will exercise responsible control over the particular services contracted for by the partnership, limited liability company, or professional corporation; and provided further that the partnership, limited liability company, or professional corporation furnishes the board with such information about its organization and activities as the board shall require by regulation. "Managers" shall mean the members of a limited liability company in which management of its business is vested in the members and the managers of a limited liability company in which management of its business is vested in one or more managers.

~~8.~~ 7. A partnership (including a registered limited liability partnership), limited liability company, or professional corporation from offering a combination of services involved in the practice of architecture or landscape architecture and construction services provided that:

a. A registered architect or landscape architect or person otherwise permitted under subsection ~~9~~ 8 to offer architectural or landscape architectural services participates substantially in all material aspects of the offering;

b. There is written disclosure at the time of the offering that a registered architect or landscape architect is engaged by and contractually responsible to such partnership, limited liability company, or professional corporation;

c. Such partnership, limited liability company, or professional corporation agrees that the registered architect or landscape architect will have responsible control of the work and that such architect's or landscape architect's services will not be terminated without the consent of the person engaging the partnership, limited liability company, or professional corporation; and

d. The rendering of architectural or landscape architectural services by such registered architect or landscape architect will conform to the provisions of North Dakota Century Code chapter 43-03 and the rules adopted under that chapter.

~~9.~~ 8. A nonresident, who holds the certification issued by the national council of architectural registration boards, or the council of landscape architectural registration boards, from offering to render the professional services involved in the practice of architecture~~,~~ or landscape

architecture; provided that the person shall not perform any of the professional services involved in the practice of architecture or landscape architecture until registered as hereinbefore provided; and further provided that the person notifies the board in writing that the person holds an NCARB or CLARB certificate and is not currently registered in the jurisdiction, but will be present in North Dakota for the purpose of offering to render architectural or landscape architectural services; the person will deliver a copy of the notice referred to in this subsection to every potential client to whom the applicant offers to render architectural or landscape architectural services; and the person promises to apply immediately to the board for registration if selected as the architect or landscape architect for the project.

~~10.~~ 9. A person, who holds the certification issued by the national council of architectural registration boards, or the council of landscape architectural registration boards, but who is not currently registered in the jurisdiction, from seeking an architectural, or landscape architectural, commission by participating in an architectural or landscape architectural design competition for a project in North Dakota; provided that the person notifies the board in writing that the person holds an NCARB or CLARB certificate and is not currently registered in the jurisdiction, but will be present in North Dakota for the purpose of participating in an architectural or landscape architectural design competition; the person will deliver a copy of the notice referred to in this subsection to every person conducting an architectural or landscape architectural design competition in which the applicant participates; and the person promises to apply immediately to the board for registration if selected as the architect or landscape architect for the project.

History: Effective February 1, 2005; amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-02

CHAPTER 8-02-03
ILLEGAL PRACTICE

Section	
8-02-03-01	Practicing Without a License
8-02-03-02	Illegal Use of the Term "Architect" or Landscape Architect
8-02-03-03	Fraud or Misrepresentation
8-02-03-04	Plan Stamping
8-02-03-05	Captive Architect or Captive Landscape Architect
8-02-03-06	Conflict of Interest
8-02-03-07	Violations of Registration Law and Rules

8-02-03-02. Illegal use of the term "architect" or landscape architect. A person who, in violation of North Dakota Century Code section 43-03-10, falsely professes to be an architect or landscape architect is guilty of an illegal practice.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-10

8-02-03-04. Plan stamping. An architect or a landscape architect who affixes, or permits the affixing of, the architect's or landscape architect's name or stamp to drawings or other instruments of service not prepared under the architect's or landscape architect's responsible control and supervision is guilty of an illegal practice.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-22

8-02-03-05. Captive architect or captive landscape architect. An architect or landscape architect who is an employee and not a principal of a firm which is controlled by persons who are not architects or landscape architects, and which offers and performs architectural or landscape architectural services illegally, on the pretext that such practice is legal because it employs an architect or landscape architect, is guilty of an illegal practice.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-02-04

8-02-04-03. Due care. An architect or landscape architect shall exercise due care and diligence in all aspects of the architect's or landscape architect's practice in order to safeguard the client and the public insofar as possible against inconvenience or loss due to errors or omissions. An architect or landscape architect shall at all times maintain close control over all services for which the architect or landscape architect is contractually responsible, including those assigned to consultants.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-03

8-03-03-02. Other states. Architects registered in other states or jurisdictions which prescribe different regulations for corporate firms ~~may~~ will be required by the board to practice as individuals in order to be registered in North Dakota. See article 8-04.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-04

8-03-04-01. Business corporations. Business corporations, and any other form of incorporation which does not require that control rest exclusively with the architect or landscape architect, are not permitted to engage in the practice of architecture or landscape architecture in North Dakota.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 10-31-04, 43-03-08

8-03-04-02. Other states. Architects or landscape architects registered in other states or jurisdictions in which incorporation meeting the basic requirements of North Dakota Century Code chapter 10-31 is unavailable to them ~~may~~ will be required by the board to practice as individuals in order to be registered in North Dakota. See article 8-04.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-06

8-03-06-01. Responsible control. In accordance with the concept in the law that architecture or landscape architecture is a personal service to the public, ~~it is mandatory that an architect or landscape architect who is also a principal be in responsible charge of practice at all times~~ the board supports any architectural practice within any legal structure as long as the corporate structure and operating agreements reflect that an architect retains responsible and complete control and individual responsibility for performing architectural services. Within any legal structure or operating agreements the architect performing or in responsible control of the professional services must be identified and that corporate structure and operating agreements must not be used to shield unlicensed practice.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-04-02
APPLICATIONS

Section

8-04-02-01	Application for Architectural Examination
8-04-02-02	Application for Registration by NCARB Certificate Holders
8-04-02-03	Applicants Not Holding NCARB Certification
8-04-02-04	Application for Landscape Architectural Examination
8-04-02-05	Acceptance for Landscape Architectural Registration to December 31, 2006 [Repealed]
8-04-02-06	Exemption From CLARB Certification [Repealed]

8-04-02-04. Application for landscape architectural examination. Candidates for landscape architectural examination ~~beginning January 1, 2005,~~ shall submit an application to the board and include a council record provided through the council of landscape architectural registration boards. If the landscape architectural applicant has not passed the licensure examination, the applicant shall apply to the council of landscape architectural registration boards to complete the examination process.

History: Effective February 1, 2005; amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-02-05. Acceptance for landscape architectural registration to December 31, 2006. ~~Candidates for landscape architectural examination for the period from January 1, 2005, to December 31, 2006, shall be accepted for the council of landscape architectural registration boards examination regardless of education or experience.~~ Repealed effective January 1, 2014.

History: ~~Effective February 1, 2005.~~
General Authority: ~~NDCC 43-03-08~~
Law Implemented: ~~NDCC 43-03-08~~

8-04-02-06. Exemption from CLARB certification. ~~Any person who applies for licensure as a landscape architect in North Dakota up to December 31, 2006, has successfully completed the council of landscape architectural registration boards landscape architectural licensing examination prior to that date or has a current landscape architectural license in another state, shall be considered to meet the requirements for a land architectural license in North Dakota in lieu of council of landscape architectural registration boards certification and regardless of education or experience. The candidate shall submit an application and application fee to the board.~~ Repealed effective January 1, 2014.

History: ~~Effective February 1, 2005.~~
General Authority: ~~NDCC 43-03-08~~
Law Implemented: ~~NDCC 43-03-08~~

CHAPTER 8-04-03

8-04-03-01. Prerequisite NCARB certification. An ~~architectural~~ architect applicant desiring registration by reciprocity shall hold the national council of architectural registration boards certification in addition to registration in the applicant's home state or other jurisdiction. Both registration and certification shall be current, in good standing, and verified by the ~~architectural~~ architect applicant's council record. The ~~architectural~~ architect applicant shall apply to the council, following the procedures outlined in chapter 8-04-02 and paying the required fees.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-15

8-04-03-02. Prerequisite CLARB certification. A landscape ~~architectural~~ architect applicant who is licensed in another jurisdiction shall submit a landscape architect application to the board. Such landscape architect application shall include a council certificate furnished by CLARB and include the required application fee.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-15

CHAPTER 8-04-04
RENEWAL

Section
8-04-04-01 ~~Annual~~ Biennial Renewal
8-04-04-02 Notice to Registrant

8-04-04-01. ~~Annual~~ Biennial renewal. Registration shall be renewed ~~annually~~ biennially upon payment by the registrant of a fee ~~of twenty-five dollars, and the registrant's stated intention to renew~~ set by the board not to exceed the limit as established by North Dakota Century Code section 43-03-18. The renewal date is ~~the anniversary of original license~~ July first of odd-numbered years.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-17, 43-03-18

8-04-04-02. Notice to registrant. The ~~secretary~~ executive director shall notify a registrant by mail at least ~~thirty~~ sixty days prior to the date of renewal. The notice shall be directed to the last-known address of the registrant. Revocation of registration for nonpayment of fees shall not be carried out unless the registrant has received a followup notification by certified mail.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-19

CHAPTER 8-04-06

8-04-06-01. Lapsed registration. A former registrant who applies for renewal ~~more~~ less than one year after the registrant's registration has lapsed due to failure to renew may, at the board's discretion, be reinstated upon payment of the renewal fee plus a reinstatement fee of one hundred dollars, and the disclosure required under section 8-03-07-01.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-05-01

8-05-01-01. Statutory requirements. In accordance with North Dakota Century Code section 43-03-14, an applicant for registration shall "pass ~~satisfactorily~~ an examination in such technical and professional courses as are established by the board", and shall pay the fees required by North Dakota Century Code section 43-03-11.

History: Amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-11, 43-03-14

CHAPTER 8-05-04
OTHER EXAMINATION PROCEDURES

[Repealed effective January 1, 2014]

~~Section~~
~~8-05-04-01~~ ~~Former Examinations~~
~~8-05-04-02~~ ~~"Home" State of Registration~~
~~8-05-04-03~~ ~~Examination Information~~

ARTICLE 8-06

MISCELLANEOUS PROVISIONS

Chapter
8-06-01 Architect's or Landscape's Architect's Stamp

CHAPTER 8-06-01
ARCHITECT'S OR LANDSCAPE ARCHITECT'S STAMP

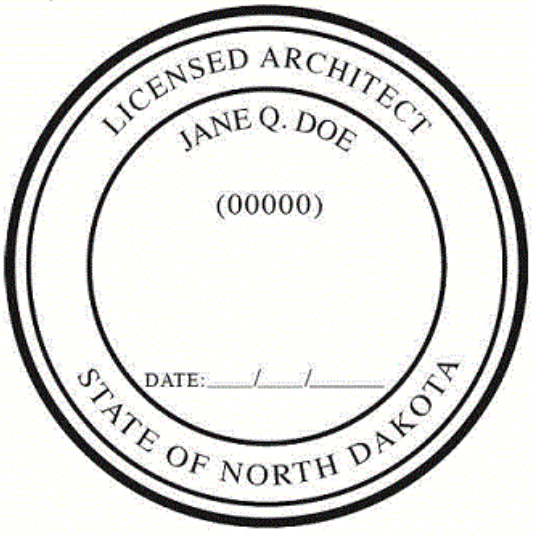
Section
8-06-01-01 Issuance and Use
8-06-01-02 Design of the Stamp
8-06-01-03 Use of the Stamp

8-06-01-01. Issuance and use. ~~Upon registration, the board shall issue each architect and landscape architect a rubber stamp which shall contain such wording as may be designated and authorized by the board. The title sheet of drawings, specifications, or technical submissions, or any combination of those items, intended for the construction of an architectural or landscape architectural project shall be imprinted by the stamp or facsimile. The architect or landscape architect under whose responsible control these instruments were prepared shall manually sign each original imprint of the seal.~~ At the time of the issuance of the certification of registration, the board shall require the certificate holder to acquire, at the certificate holder's expense, a stamp or indicia to be used by the certificate holder in the conduct of the certificate holder's practice and to be impressed upon drawings, plans, and other documents prepared by the certificate holder. The board shall adopt rules governing the technical requirements of such stamp and indicia and the certificate holder's signature.

History: Amended effective February 1, 2005; January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-22

8-06-01-02. Design of stamp.

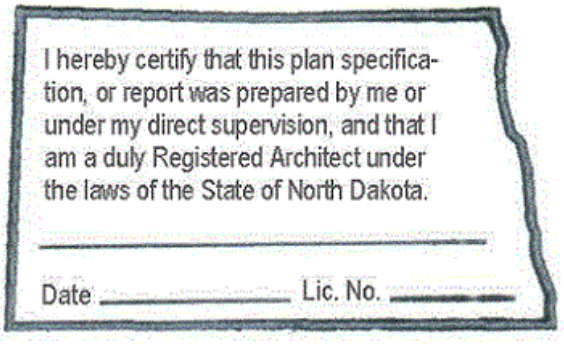
1. Each licensed architect's or landscape architect's stamp shall be no less than one and one-half inches and no more than two inches in diameter. It shall contain the name of the licensed architect or landscape architect; the individual's license number, the word "DATE:__/__/____" and the words "LICENSED ARCHITECT - STATE OF NORTH DAKOTA" or "LICENSED LANDSCAPE ARCHITECT - STATE OF NORTH DAKOTA" as appropriate. This stamp shall be as per the format below:

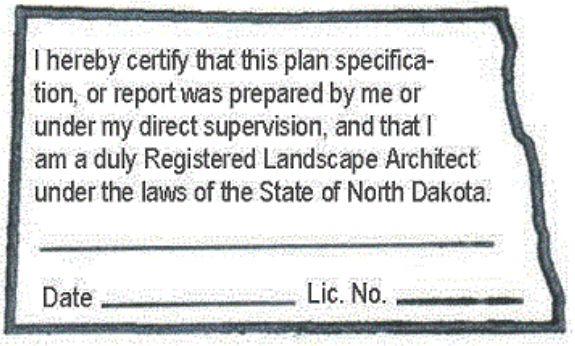


(Example - Architect's stamp)

(Example - Landscape architect's stamp)

The stamp designed adopted by the board in the rules and regulations dated _____, as it appears below, will be accepted for persons licensed prior to the effective date of those rules.





(Example - North Dakota current stamps)

2. The format of the stamp may be a rubber stamp, an embosser, or a digital image.

3. Each licensee is responsible for procuring the licensee's own stamp.

History: Effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-22

8-06-01-03. Use of the stamp.

1. The stamp shall be imprinted on all documents prepared by the licensed architect or landscape architect to be used for construction or technical submissions whether the project or building type is exempt or not exempt under North Dakota statutes.

2. Documents to be used for construction shall be imprinted as follows:

   a. On each final drawing sheet; and

   b. On the cover, title, certification, or index page or each set of the project manual or specifications.

3. Documents to be used for technical submissions shall be imprinted as follows:

   a. On each final design drawing; and

   b. On the cover, title, certification, or index page of each set.

4. Letter-formatted reports or professional opinions shall be imprinted at the end of the letter in the area of the letter's salutation.

5. The original signature of the licensed architect or landscape architect named on the stamp shall appear across the face of each original stamp imprint, along with the date of signing. This signature may be either digital or wet. Documents with digital stamp, signature, and date that are submitted for building permitting shall have a wet signature and date written over the digital stamp, signature, and date. This requirement is for any project or building type whether exempt or not exempted under statutes of North Dakota. The digital signature with date and the wet stamp shall approximate the format shown below:

(Example of architect's digital or wet stamp)

(Example of landscape architect's digital or wet stamp)

(Examples of architect's and landscape architect's wet signature of digital stamp for permitting process)

6. The stamp appearing on any drawings, project manual or specification, technical submissions, or letter-formatted reports or opinions shall be prima facie evidence that said technical submission was prepared by or

under the responsible control of the individual name on the stamp only if the stamp has been signed and dated.

History: Effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-22

CHAPTER 8-07-03

8-07-03-05. Assistance to unqualified applicant prohibited. A registered architect or landscape architect shall not assist the application for registration of an individual known by the registered architect or landscape architect to be unqualified in respect to education, experience, or character.

History: Effective February 1, 2005; amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-07-05

8-07-05-02. Sign or seal on documents. An architect or landscape architect shall not sign or seal drawings, specifications, reports, or other professional work for which the person does not have responsible control; provided, however, that in the case of the portions of such professional work prepared by the architect's or landscape architect's consultants, registered under this or another professional registration law of this jurisdiction, the architect or landscape architect may sign or seal that portion of the professional work if the architect or landscape architect has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy. Signature and seal requirements must be prepared as outlined in sections 8-06-01-02 and 8-06-01-03.

History: Effective February 1, 2005; amended effective January 1, 2014.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

TITLE 10

ATTORNEY GENERAL

JANUARY 2014

CHAPTER 10-12-01
CONCEALED FIREARMS AND DANGEROUS WEAPONS LICENSE

Section	
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10-12-01-02	Application for Concealed Weapons License
10-12-01-03	Nonresident Applicants
10-12-01-04	Classroom Instruction and Written Test
10-12-01-05	Proficiency and Shooting Test
10-12-01-06	Lost or Destroyed Licenses
10-12-01-07	Denial, Revocation, or Cancellation of a Concealed Weapons License
10-12-01-08	Renewal of a Concealed Weapons License
10-12-01-09	Residence Change or Change in Material Facts
10-12-01-10	Appeals and Reconsideration
10-12-01-11	Reciprocity
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10-12-01-13	Renewal of ~~Firearm or Dangerous Weapons Instructor~~ Test Administrator Certification
10-12-01-14	~~Firearm or Dangerous Weapons Instructor~~ Test Administrator Training and Testing Procedures and Fees
10-12-01-15	Denial, Revocation, or Cancellation of ~~Firearm or Dangerous Weapons Instructor~~ Test Administrator Certification
10-12-01-16	Requirements for Materials Accompanying Concealed Weapons License Application

10-12-01-01. Definitions. The terms used throughout this chapter have the same meaning as in the North Dakota Century Code unless otherwise defined here:

1. "Agency" means the attorney general's office bureau of criminal investigation division.

2. "Applicant" means an individual who is applying for a concealed weapons license.

3. "Class 1 license" means a concealed weapons license issued to an individual at least twenty-one years of age who has participated in classroom instruction on weapon safety rules and the deadly force law of North Dakota, has demonstrated evidence of familiarity with a firearm ~~or dangerous weapon~~, and has successfully completed an actual shooting ~~or certified proficiency~~ exercise in accordance with these rules.

4. "Class 2 license" means a concealed weapons license issued to an individual at least eighteen years of age who has successfully completed an open-book examination on weapon safety rules and the deadly force law of North Dakota.

5. "Concealed weapons license" means a class 1 firearm or class 2 firearm and dangerous weapon license issued by the director of the bureau of criminal investigation to carry a firearm or dangerous weapon concealed.

6. "Crime of violence" means a violation of North Dakota Century Code section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, or any equivalent statute of any other jurisdiction.

7. "Director" means the director of the bureau of criminal investigation.

~~8. "Instructor" means an individual certified by the attorney general to provide classroom instruction on weapon safety rules and the North Dakota deadly force law, administer written examinations for concealed weapons licenses, determine evidence of familiarity with firearms and dangerous weapons, and conduct shooting and proficiency exercises for firearms and dangerous weapons.~~

~~9.~~ 8. "Mentally incompetent" means an individual requiring treatment as defined in subsection 11 of North Dakota Century Code section 25-03.1-02.

~~10.~~ 9. "Offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct that:

a. Is done knowingly contrary to justice, honesty, or good morals;

b. Includes as an element of the offense falsification or fraud;

c. Includes as an element of the offense harm or injury directed to another individual or entity or another individual's or entity's property; or

d. Is in violation of North Dakota Century Code chapter 12.1-20 or 12.1-27 or equivalent laws of another state or the federal government.

10. "Test administrator" means an individual certified by the attorney general to provide classroom instruction on weapon safety rules and the North Dakota deadly force law, administer written examinations for concealed weapons licenses, determine evidence of familiarity with weapons, and conduct shooting and proficiency exercises for firearms. This definition includes all law enforcement personnel, military personnel, hunter safety instructors, private civilians, and any other individuals in any other classification who are certified by the attorney general to administer a concealed weapons test.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03

10-12-01-02. Application for concealed weapons license.

1. An application for a class 1 or class 2 concealed weapons license must be on an original form approved by the director of the bureau of criminal investigation. Only a satisfactorily completed original application may be approved by the director. The application must include:

   a. All questions on the application answered and all applicable information provided;

   ~~b. A valid reason for the applicant carrying a concealed weapon;~~

   ~~c. The signed approval of the sheriff of the applicant's county of residence. The sheriff may not approve the application for a concealed weapons license until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedures specified in this chapter;~~

   ~~d. If the applicant resides in a city with a police department, signed approval of the chief of police or the chief's designee;~~

   ~~e.~~ b. Two fingerprint cards containing the classifiable fingerprints of the applicant; and

   ~~f.~~ c. Two color passport-size ~~color~~ photographs of the applicant.

2. The applicant shall provide to the agency all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence.

3. The applicant shall provide to the director written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records.

4. A nonrefundable ~~license~~ application processing fee in the amount of ~~forty-five~~ sixty dollars, by certified check or money order, payable to the order of the attorney general, which includes the fees for state and federal bureau of investigation criminal history record checks.

5. ~~The sheriff shall process the application within thirty days after completion of the testing portion of the application process.~~ The attorney general may contract with a vendor to collect credit card processing fees.

~~6. If the applicant resides in a city that has a police department, the chief of police shall process the application within ten working days from receipt of the application by the city's police department.~~

~~7.~~ 6. The agency shall process the application and make a determination whether to issue the concealed weapons license within ~~forty-five~~ sixty days from receipt of the satisfactorily completed application ~~from the forwarding law enforcement agency~~.

~~8.~~ 7. The applicant must ~~be a citizen of the United States and successfully pass a criminal history background investigation conducted by the agency~~ meet all the criteria set out in subsection 1 of North Dakota Century Code section 62.1-04-03.

~~9.~~ 8. The ~~instructor~~ test administrator shall complete the application as follows:

a. If the application is for a class 2 concealed weapons license, the ~~instructor~~ test administrator shall complete the test block section, including recording the applicant's passing score, and verify whether the applicant has successfully completed an open-book written test on weapon safety rules and the deadly force law of North Dakota. The ~~instructor~~ test administrator shall sign the application.

b. If the application is for a class 1 concealed weapons license, the ~~instructor~~ test administrator shall complete the test block section, including recording the applicant's passing score, and verify whether the applicant has successfully participated in classroom instruction on weapon safety rules and the deadly force law of North Dakota, has demonstrated familiarity with a ~~firearm or dangerous~~ weapon, has completed a shooting course for firearms ~~or a proficiency exercise for other dangerous weapons~~, and has passed an open-book written test on weapon safety rules and the

deadly force law of North Dakota. The ~~instructor~~ test administrator shall sign the application.

~~10.~~ 9. An incomplete application will be returned to the applicant for completion. The satisfactorily completed application must be returned to the agency no later than ~~twenty~~ thirty days from the postmark date the incomplete application was returned to the applicant. Failure to return the satisfactorily completed application within the time required may result in denial of the application and the applicant will be required to recommence the entire application process.

10. All applications must be submitted to the agency by United States mail only. All applications must be submitted individually. Joint or bulk submission of applications will be returned and will not be considered submitted to the agency.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1), 62.1-04-03(4), 62.1-04-03(5)

10-12-01-03. Nonresident applicants. ~~United States citizens~~ Applicants who are not residents of North Dakota may obtain a North Dakota concealed weapons license. To obtain a license, the nonresident shall comply with all requirements of North Dakota Century Code chapter 62.1-04 and these rules.

History: Effective September 1, 1986; amended effective April 1, 2010; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)

10-12-01-04. Classroom instruction and written test.

1. Applicants for a class 2 concealed weapons license shall successfully complete the written examination and submit an application for a concealed weapons license.

2. Applicants for a class 1 concealed weapons license shall attend classroom instruction on weapon safety rules and the deadly force law of North Dakota before they may complete the written examination and submit an application for a concealed weapons license. Only ~~instructors~~ test administrators certified under this chapter may conduct classroom instruction for applicants for concealed weapons licenses.

3. The written test must be an open-book test approved by the attorney general. The written test must include examination on weapons safety rules and the deadly force law of North Dakota. A minimum score of seventy percent overall and one hundred percent on the deadly force law of North Dakota is necessary to pass the written test. The written

test may only be administered within the state of North Dakota and by ~~an instructor~~ a test administrator certified under this chapter. The written test may not be administered in conjunction with any other state's concealed weapons laws or procedures.

4. The classroom instruction may only be administered within the state of North Dakota and by a test administrator certified under this chapter. The classroom instruction may not be administered in conjunction with any other state's concealed weapons laws or procedures.

History: Effective September 1, 1986; amended effective April 1, 2010; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(2)

10-12-01-05. Proficiency and shooting test.

1. Only ~~an instructor~~ a test administrator certified under this chapter may administer a firearm shooting or proficiency exercise. Successful completion of the firearm shooting or proficiency exercise requires demonstrated familiarity and safety with a firearm ~~or dangerous weapon~~.

2. Evidence of familiarity with a firearm ~~or dangerous weapon~~ may be satisfied by one of the following:

   a. Certification of familiarity with a firearm ~~or dangerous weapon~~ by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor~~, or dangerous weapons instructor~~;

   b. Evidence of equivalent experience with a firearm ~~or dangerous weapon~~ through participation in an organized shooting competition, law enforcement, or military service~~, or dangerous weapons course of training~~;

   c. Possession of a license from another state to carry a firearm ~~or dangerous weapon~~, concealed or otherwise, which is granted by that state upon completion of similar or equivalent classroom instruction, testing, and demonstration of firearm ~~or dangerous weapon~~ familiarity and proficiency; or

   d. Evidence that the applicant, during military service, was found to be qualified to operate a firearm ~~or dangerous weapon~~.

3. The firearm shooting exercise may only be conducted within the state of North Dakota and in accordance with shooting criteria approved by

the director. The minimum passing score is seventy percent of the total rounds fired.

4. The applicant may use any safe firearm with any type of ammunition suitable for that firearm. The ~~instructor~~ test administrator shall determine whether the firearm is safe and the ammunition is appropriate before the shooting exercise starts. ~~The applicant must be able to load, unload, and holster and carry the firearm safely.~~

~~5. If the applicant is applying for a concealed weapons license for a dangerous weapon as defined in subsection 1 of North Dakota Century Code section 62.1-01-01 and the weapon is not a firearm, the applicant shall demonstrate familiarity, safety, and proficiency in handling the weapon.~~

~~6.~~ 5. The firearm shooting or proficiency exercise may not be administered in conjunction with any other state's concealed weapons license application process.

History: Effective September 1, 1986; amended effective April 1, 2010; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(2)

10-12-01-07. Denial, revocation, or cancellation of a concealed weapons license. The director of the bureau of criminal investigation may deny, revoke, or cancel a concealed weapons license for the following reasons:

1. The applicant or licenseholder is prohibited from owning, possessing, or having a firearm under North Dakota Century Code section 62.1-02-01 or under federal law or has committed any other violation of North Dakota Century Code title 62.1; or

2. The applicant made a material misstatement on the application for the concealed weapons license.

3. ~~For a class 1 license in~~ In accordance with subdivision c or e of subsection 1 of North Dakota Century Code section 62.1-04-03.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(f), 62.1-04-03(6), 62.1-04-03(7)

10-12-01-08. Renewal of a concealed weapons license. A concealed weapons license may be renewed if a current licenseholder is eligible for a concealed weapons license and completes a renewal application subject to the following conditions:

1. ~~Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required.~~ No additional testing is required for timely renewal of a class 2 license.

2. A class 1 license may be renewed upon successful completion of the class 1 requirements within ~~one year~~ thirty days before submission of the application for renewal.

3. Timely renewal is the responsibility of the applicant. The agency sends renewal notifications to the licenseholder at the licenseholder's last-known address on file with the agency. The renewal application may be delivered to ~~law enforcement~~ the agency not more than one hundred eighty days before the license expires through the date the license expires. ~~Failure to deliver a renewal application to the local law enforcement agency at least ninety days prior to the license expiration date may result in expiration of the currently held license until such time as it is renewed.~~

4. An incomplete application is not deemed to have been submitted to the bureau of criminal investigation until after it has been returned satisfactory completed. The satisfactorily completed application must be returned to the bureau of criminal investigation no later than ~~twenty~~ thirty days from the postmark date the incomplete application was returned to the applicant. Failure to return the satisfactorily completed application within the time required will result in denial of the application and the applicant will be required to recommence the entire application process.

5. Renewal applications may not be submitted to ~~law enforcement~~ the agency after the date the current license expires. Renewal applications received by ~~law enforcement~~ the agency which are postmarked after the current license expires are invalid. Invalid application forms may be destroyed by the ~~law enforcement~~ agency ~~or bureau of criminal investigation~~. The licenseholder will be required to reapply as a new applicant and complete all required testing.

~~6. A license issued before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 license requirements and satisfaction of the age requirement.~~

~~7.~~ 6. ~~The renewal application must be processed within thirty days after its receipt by the sheriff. The chief of police, if applicable, is required to process the renewal application within ten working days of receipt by the agency.~~ The bureau of criminal investigation is required to process

the renewal application and make a determination within ~~forty-five~~ sixty days of receipt.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03

10-12-01-09. Residence change or change in material facts.

1. A concealed weapons licenseholder shall notify the director of the bureau of criminal investigation ~~within thirty days~~ of a change of address. The notification must be in writing, must be postmarked within thirty days of the change of address, and must include the licenseholder's name, former address, license number, and new address. The new address must include the new house number or apartment number, street name, city, zip code, and county.

2. The applicant or licenseholder shall notify the director of any change of material facts that affect the need for or possession of a concealed weapons license.

History: Effective September 1, 1986; amended effective April 1, 2010; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(5)

10-12-01-12. ~~Firearm or dangerous weapons instructor~~ Test administrator certification.

1. The attorney general may certify ~~firearm or dangerous weapons instructors~~ test administrators to conduct classroom instruction, administer the written examination, and, if applicable, have the applicant demonstrate familiarity with a ~~firearm or dangerous~~ weapon, and conduct the shooting and ~~dangerous weapons~~ proficiency examination.

2. In order to become certified as a ~~firearm or dangerous weapons instructor~~ test administrator, an individual shall successfully complete the concealed weapons ~~instructor~~ test administrator course approved by the director. Successful completion of the certification program requires a passing score on a written examination and a shooting course of fire.

3. The attorney general may certify a peace officer as a ~~firearm or dangerous weapons instructor~~ test administrator to conduct classroom instruction and administer the written examination who has current certification from the North Dakota peace officer standards and training board in methods of instruction.

4. The attorney general may certify a peace officer as a ~~firearm or dangerous weapons instructor~~ test administrator to conduct firearm ~~and dangerous weapons~~ familiarity demonstrations and shooting and proficiency exercises who has current certification from the North Dakota peace officer standards and training board as a weapons instructor.

5. All applications for ~~instructor~~ test administrator certification must be made on a form approved by the director ~~of the bureau of criminal investigation~~.

6. ~~Firearm or dangerous weapons instructor~~ Test administrator certification is effective for ~~three~~ five years from the date of certification.

7. Except as otherwise provided in this chapter, a ~~firearm or dangerous weapons instructor~~ test administrator must possess a current valid North Dakota concealed weapons license as a requirement for certification under this section.

History: Effective April 1, 2010; amended effective January 1, 2012; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-13. Renewal of ~~firearm or dangerous weapons instructor~~ test administrator certification.

1. The director shall prescribe and provide the required training program for renewal of ~~firearm or dangerous weapons instructor~~ test administrator certification, including classroom~~,~~ and firearm~~, and dangerous weapons~~ instruction. Successful completion of the renewal training program requires a passing score on a written examination and a shooting course of fire ~~or dangerous weapons proficiency~~.

2. Applications for renewal must be submitted on a form approved by the director.

3. Except as otherwise provided in this chapter, a ~~firearm or dangerous weapons instructor~~ test administrator must possess a current valid North Dakota concealed weapons license as a requirement for renewal of certification under this section.

History: Effective April 1, 2010; amended effective January 1, 2012; August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-14. ~~Firearm or dangerous weapons instructor~~ Test administrator training and testing procedures and fees.

1. A certified ~~firearm or dangerous weapons instructor~~ test administrator may only conduct the training and testing procedures according to the requirements established by the director. The instructor may determine the frequency and class size of training and testing sessions.

2. A certified ~~firearm or dangerous weapons instructor~~ test administrator shall submit ~~all~~ a listing of the dates of every classroom instruction ~~and~~, training ~~information~~, and testing of five or more students to the director on a form approved by the director prior to the commencement of classroom instruction ~~or~~, training, or testing to monitor course content and instructor development.

3. A certified ~~firearm or dangerous weapons instructor~~ test administrator may not charge a fee exceeding fifty dollars to conduct the requirements for a concealed weapons license.

4. A certified test administrator will complete rosters for all concealed weapons classes and tests on a form approved by the director. All rosters will be submitted by mail to the director within fifteen days of completion of the testing.

5. A certified test administrator must maintain the completed test and class records for one year after the date of testing.

History: Effective April 1, 2010; amended effective August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-15. Denial, revocation, or cancellation of ~~firearm or dangerous weapons instructor~~ test administrator certification. The director may deny, revoke, or cancel ~~firearm or dangerous weapons instruction~~ test administrator certification. Grounds for denial, revocation, or cancellation include:

1. The ~~instructor~~ test administrator is prohibited from owning, possessing, or having a firearm under North Dakota Century Code section 62.1-02-01 or under federal law;

2. The ~~instructor~~ test administrator has committed any other violation of North Dakota Century Code title 62.1;

3. The ~~instructor~~ test administrator willfully submitted false material ~~false~~ information for the purposes of obtaining ~~instructor~~ test administrator certification or renewal;

4. The ~~instructor~~ test administrator has failed to follow the approved procedures for the issuance of a concealed weapons license;

5. The ~~instructor~~ test administrator has willfully submitted false material ~~false~~ information concerning the training or testing conducted for a concealed weapons license; or

6. The ~~instructor~~ test administrator has not filed a completed application for certification as a ~~firearm or dangerous weapons instructor~~ test administrator or has not met the requirements for certification as a ~~firearms or dangerous weapons instructor~~ test administrator.

Denial, revocation, suspension, or cancellation of test administrator certification based on self-disclosure of a violation or violations will be determined on a case by case basis.

History: Effective April 1, 2010; amended effective August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-16. Requirements for materials accompanying concealed weapons license application.

1. Fingerprints for a concealed weapons license may be taken by:

   a. A test administrator who has been authorized by the agency; or

   b. Law enforcement personnel who have been trained to take fingerprints.

2. Photographs of the applicant must adhere to the following criteria:

   a. Photographs must be the size of a normal United States passport photograph at two inches by two inches;

   b. Photographs must be in color;

   c. Photographs must be printed on photo paper;

   d. No hats, caps, scarves, or other regular kinds of head covering may be worn in the photograph;

   e. No glasses may be worn in the photograph;

   f. No face masks or other types of coverings may be worn in the photograph;

   g. The photograph must depict a full representation of the front of the applicant's face with open eyes and all features visible;

h. The photograph should include the area from the top of the applicant's head to the applicant's shoulders;

i. Uniforms may not be worn in the photograph; and

j. The applicant's face may not be obscured.

Exceptions to the photographic requirements may be made at the discretion of the director for religious or medical reasons upon written request by the applicant or licenseholder. The request must be accompanied by documentation verifying the reason for the exception and mailed to the agency.

History: Effective August 1, 2013.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(10)

CHAPTER 10-16-02

10-16-02-07. Sales commission and bonus.

1. The lottery shall credit a retailer's account for:

   a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;

   b. A sales commission of five percent of the amount of an initial or renewal subscription sale that is transacted through the lottery on a subscription application form that is issued by the retailer's terminal or procured from the retailer with the retailer's license number on it. The retailer must be currently licensed when the subscription application form is processed by the lottery. There is no sales commission on the value of a prize on a winning subscription play that automatically extends a subscription period according to subdivision a of subsection 10 of section 10-16-03-08.1; and

   c. A sales bonus for selling a ticket with a winning play, or for an initial or renewal subscription sale described by subdivision b, including an extended subscription period, that has a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play of a ticket or when the winning subscription play is validated. If the winning play for POWERBALL® has the power play option, or the winning play for MEGA MILLIONS® has the Megaplier® option, or the winning play for HOT LOTTO® has the triple sizzler option, the retailer's account must also be credited for an additional bonus as stated below:

Prize	Bonus	Additional Bonus
POWERBALL®		
Grand prize	$50,000	Additional $50,000 with power play
$1,000,000	$5,000	Additional $5,000 with power play
$10,000	$500	Additional $500 with power play
MEGA MILLIONS®		
Grand prize	$50,000	Additional $50,000 with Megaplier®
~~$250,000~~ $1,000,000	~~$2,500~~ $5,000	~~Additional $2,500 with Megaplier®~~ Additional $5,000 with Megaplier®
~~$10,000~~ $5,000	~~$500~~ $250	~~Additional $500 with Megaplier®~~ Additional $250 with Megaplier®

HOT LOTTO®		
Grand prize	$5,000	Additional $5,000 with triple sizzler
~~$10,000~~ $30,000	~~$500~~ $750	~~Additional $500 with triple sizzler~~ Additional $750 with triple sizzler
$3,000	$150	Additional $150 with triple sizzler
WILD CARD 2®		
Grand prize	$2,000	
~~$5,000~~ $6,000	~~$250~~ $250	
2BY2®		
Grand prize		
$22,000	$500	
$44,000*	$1,000	

*Tuesday draw double grand prize winning play on a qualifying multi-draw ticket.

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, Megaplier®, and triple sizzler, that the lottery conducts for a certain period of time based on parameters set by the lottery.

History: Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008; January 31, 2010; January 15, 2012; October 19, 2013.
General Authority: NDCC, 53-12.1-13
Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-03-08. Claim of a prize. A prize for a validated winning ticket must be claimed as follows:

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.

2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.

3. A ticket for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. An unclaimed prize is forfeited and retained by the lottery. However, if the grand prize for the game of POWERBALL®, MEGA MILLIONS®, HOT LOTTO®, or WILD CARD 2® is unclaimed, the MUSL shall administer the grand prize money.

4. A person who owns or redeems a winning ticket:

   a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and game group game rules related to the game for which the ticket was issued; and

   b. Agrees that the state, lottery, the MUSL, game group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.

5. The owner of a winning ticket may win only one prize per play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.

6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.

7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.

8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:

   a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or

   b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.

9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may redeem the ticket and pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.

10. If an apparent winning ticket has a total prize value of all plays of six hundred dollars or more and one person signed or claims ownership of the ticket, a retailer may not redeem the ticket and shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery. The ticket holder shall complete and sign the form and back side of the ticket and present or mail the form and ticket to the lottery. For a validated winning ticket, the lottery shall present or mail a check to the player for the amount of the prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. The lottery shall pay the prize to the person whose name is on the ticket, notwithstanding the name on the claim form. For a nonwinning ticket, the lottery shall deny the claim, notify the claimant, and return the ticket.

11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim form and instruct the claimant how to file a claim with the lottery, as follows:

   a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;

b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;

c. The prize claim form and ticket must be presented or mailed to the lottery;

d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, <u>at the claimant's request,</u> the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants <u>or present or mail a check to each claimant for the amount of each player's prize</u>; and

e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.

12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.

13. Except as provided by rule, if two or more plays win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a set prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.

14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.

15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.

16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.

17. A prize may not be payable to a trust until after the lottery conducts a debt setoff on the beneficiaries of the trust.

18. If a player redeems an original multi-draw ticket before the ticket's last draw and a retailer returns the original ticket, rather than an issued exchange ticket, to the player, the lottery may not pay another prize on the original ticket until after the exchange ticket expires and has not been redeemed.

19. A winning ticket with a total prize value of all plays of six hundred dollars or more may not be paid to a person who is identified as being in the United States illegally.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; January 31, 2010; January 1, 2011; October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

10-16-03-08.1. Subscription.

1. A player may procure a subscription application form from a retailer, lottery's office, or lottery's website.

2. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for thirteen, twenty-six, or fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, ~~at the player's option, the cost of~~ the subscription would be ~~prorated~~ refunded to the player based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased plus the value of an extension.

3. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery. A player may apply for a subscription on the lottery's website or by mail, by telephone, or in person. A player may use cash, check, automated clearinghouse, debit card, or authorized credit card to pay for a subscription.

4. A person must be at least eighteen years of age.

5. A person must have a mailing address within the state of North Dakota when the original or renewal subscription application form was submitted to the lottery.

6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.

7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may, based on the owner's request, split a prize among two or more persons ~~provided that the share of each person's prize is equal to or more than six hundred dollars~~.

8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation card to the subscriber. The confirmation card is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation card must include:

   a. Name and address of the subscriber;

   b. Assigned subscriber number;

   c. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of MEGA MILLIONS®, indication of whether the play has the Megaplier® option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;

   d. Number of and starting and ending dates of the draws;

   e. Numbers, letters, or symbols of the play;

   f. Notice that the subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and

   g. Explanation of how a prize will be awarded.

9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified on the confirmation card. The effective date of a new subscription play cannot be sooner than fourteen days from the original date of subscription. The effective date of a renewal subscription play can begin with the next draw following the end of the current subscription.

10. If the value of a prize on a winning <u>POWERBALL®, HOT LOTTO®, WILD CARD 2®, or 2BY2®</u> subscription play for a draw is:

   a. Five dollars or less, the lottery shall automatically extend the subscription period by the number of draws equal to the value of the winning play;

   b. Equal to or more than six dollars and less than six hundred dollars, the lottery shall send the player a check for the prize; or

c. Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.

11. If the value of a prize on a winning MEGA MILLIONS® subscription play for a draw is:

a. Less than six hundred dollars, the lottery shall send the player a check for the prize; or

b. Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to the North Dakota Century Code section 53-12.1-12.

~~11.~~ 12. If the owner of a subscription changes the owner's name or address, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

History: Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008; July 1, 2010; October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

CHAPTER 10-16-04

10-16-04-04. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize pool accounts and prize reserve ~~account is~~ accounts are funded.

2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.

3. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the guaranteed annuitized grand prize must be determined by dividing the guaranteed annuitized grand prize by the number of winning plays.

4. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in thirty graduated payments with the initial payment being made in cash, followed by twenty-nine payments (increasing each year) by a rate determined by the game group funded by the annuity. Annual payments after the initial payment must be made by the lottery on the anniversary date or if this date falls on a nonbusiness day, then the first business day following the anniversary date of the draw of the grand prize winning numbers.

5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

6. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008; January 15, 2012; January 19, 2014.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-04-06. Power play option.

1. The power play option is a limited extension of the POWERBALL® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply or increase the amount of a set prize.

2. A qualifying play is a single POWERBALL® play for which the player pays an extra one dollar for the power play option. Power play does not apply to the grand prize.

3. A qualifying play which wins one of the seven lowest set prizes (excluding the match 5+0 prize) will be multiplied by the number selected, two through five, in a separate random power play drawing. The match 5+0 prize, for players selecting the power play option, shall be paid two million unless a higher limited promotional dollar amount is announced by the game group or unless a lower dollar amount is announced by the game group under its limitation of libability rules.

~~3.~~ 4. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying power play ~~which wins one of the eight lowest set prizes (excluding the jackpot)~~ will pay the amounts shown below when matched with the power play number drawn:

POWERBALL® Pays Instead

Matches Per Play	Set Prize Amount	Prize Amount With Power Play Purchase	5X	4X	3X	2X
5 white + 0 red	$1,000,000	$2,000,000				
4 white + 1 red	$10,000	~~$40,000~~	$50,000	$40,000	$30,000	$20,000
4 white + 0 red	$100	~~$200~~	$500	$400	$300	$200
3 white + 1 red	$100	~~$200~~	$500	$400	$300	$200
3 white + 0 red	$7	~~$14~~	$35	$28	$21	$14
2 white + 1 red	$7	~~$14~~	$35	$28	$21	$14

1 white + 1 red	$4	~~$12~~	$20	$16	$12	$8
0 white + 1 red	$4	~~$12~~	$20	$16	$12	$8

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, the eight lowest power play prizes will be changed to an amount announced after the draw. For example, if the match 4+1 set prize amount of ten thousand dollars becomes five thousand dollars under the game group's rules, a power play player winning that prize amount when a "5" has been drawn would win ~~twenty~~ twenty-five thousand dollars ($5,000 x 5).

6. The following table reflects the probability of the power play numbers being drawn:

Power Play	Probability of Prize Increase
5X - Prize won times 5	1 in 10
4X - Prize won times 4	1 in 10
3X - Prize won times 3	1 in 3.33
2X - Prize won times 2	1 in 2

Power play does not apply to the grand prize. A power play match of 5+0 prize is set at two million dollars, regardless of the multiplier selected. The game group may elect to run limited promotions that may modify the multiplier features.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008; January 4, 2009; November 1, 2010; January 15, 2012; January 19, 2014.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-05

10-16-05-04. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded.

2. The prize money allocated to the gross grand prize pool must be divided equally by the number of plays that win the grand prize. If the gross grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the gross grand prize must roll over and be added to the gross grand prize pool for the next draw.

3. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

4. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

5. A gross grand prize winner will receive a withholding taxes paid prize where the lottery pays the prize winner a net prize amount, which consists of the lottery reducing the gross grand prize amount by the required federal and state withholding taxes, and withholding and depositing on behalf of the prize winner the required federal and state withholding taxes on the gross grand prize amount and the lottery paying the prize winner the residual amount (subject to any setoff requirements). The withholding taxes paid prize may be higher or lower than the advertised grand prize amount.

6. The advertised grand prize amount will be publicly announced as the grand prize for the drawing. The advertised grand prize amount is not the gross grand prize amount. The advertised grand prize is the ~~minimum~~ cash amount the prize winner receives, on a pari-mutuel basis, after the lottery reduces the gross grand prize amount by the required federal and state withholding taxes (subject to any setoff requirements). The calculation of federal and state withholding taxes for the advertised grand prize amount is based on a resident United States citizen with a valid social security number.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; May 12, 2013; October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-05-06. Triple sizzler option.

1. The triple sizzler option is a limited extension of the HOT LOTTO® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply the amount of a set prize.

2. A qualifying play is a single HOT LOTTO® play for which the player pays an extra one dollar for the triple sizzler option. The triple sizzler option does not apply to the gross grand prize. A qualifying play which wins one of the eight set prizes will be multiplied by three. The game group may change the multiplier number three for a special promotion.

3. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying triple sizzler play will pay the amounts shown below:

Matches Per Play	Prize	3x
5 white + 0 orange	$30,000	$90,000
4 white + 1 orange	$3,000	$9,000
4 white + 0 orange	$100	$300
3 white + 1 orange	$50	$150
3 white + 0 orange	$6	$18
2 white + 1 orange	$6	$18
1 white + 1 orange	$3	$9
0 white + 1 orange	$2	$6

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, the triple sizzler prizes will be a multiple of the new set prize amounts. For example, if the match 5+0 set prize amount of thirty thousand dollars becomes twenty-seven thousand dollars under the game group's rules, a triple sizzler player winning that prize amount would win eighty-one thousand dollars ($27,000 x 3).

History: Effective January 3, 2008; amended effective May 12, 2013; October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-08

10-16-08-01. Game description. To play MEGA MILLIONS®, a player selects five different white numbers, between one and ~~fifty-six~~ seventy-five, and one additional gold number (Mega Ball®) between one and ~~forty-six~~ fifteen. The additional number may be the same as one of the first five numbers selected. The price of a play is one dollar. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis. A set prize (cash prize of ~~two hundred fifty thousand~~ one million dollars or less) is paid on a single-payment cash basis. Draws are held every Tuesday and Friday.

History: Effective January 31, 2010; amended effective October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-02. Expected prize pool percentages and odds. The minimum grand prize is ~~twelve~~ fifteen million dollars and is paid on a pari-mutuel basis. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts with these expected prize payout percentages:

Matches Per Play	Prize	Prize Pool Percentage Allocated to Prize	Odds~~*****~~**
5 white + 1 gold	Grand prize*	~~63.60%~~ 65.15%	~~1:175,711,536~~ 1:258,890,850
5 white + 0 gold	~~$250,000**~~ $1,000,000	~~12.80%~~ 10.82%	~~1:3,904,701~~ 1:18,492,204
4 white + 1 gold	~~$10,000**~~ $5,000	~~2.90%~~ 1.35%	~~1:689,065~~ 1:739,688
4 white + 0 gold	~~$150**~~ $500	~~1.96%~~ 1.89%	~~1:15,313~~ 1:52,835
3 white + 1 gold	~~$150**~~ $50	~~2.18%~~.93%	~~1:13,781~~ 1:10,720
3 white + 0 gold	$5	1.31%	1:766
2 white + 1 gold	~~$10~~ $5	~~2.38%~~ 2.11%	~~1:844~~ 1:473
~~3 white + 0 gold~~	~~$7~~	~~4.58%~~	~~1:306~~
1 white + 1 gold	~~$3~~ $2	~~4.26%~~ 7.08%	~~1:141~~ 1:56
0 white + 1 gold	~~$2~~ $1	~~5.34%~~ 9.35%	~~1:75~~ 1:21

Overall odds of winning a prize on a one dollar play are ~~1:39.89~~ 1:14.71.

* The grand prize is pari-mutuel and will be divided equally by the number of ~~jackpot prize winners~~ plays winning the grand prize.

~~**~~ ~~For any drawing, if prize liability exceeds the lesser of 300% of MEGA MILLIONS® sales or 50% of draw sales plus $50,000,000, then these prizes become pari-mutuel.~~

~~***~~** Reflects the odds of winning and probable distribution of winning tickets in and among each prize tier, based on the total number of possible combinations.

History: Effective January 31, 2010; amended effective October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-03. Prize pool and payment.

1. The prize pool for all prize categories must consist of up to fifty-five percent of each draw period's sales after the prize reserve account is funded.

2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.

3. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the annuitized grand prize must be determined by dividing the annuitized grand prize by the number of winning plays.

4. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in ~~twenty-six~~ thirty graduated annual payments with the initial payment being made in cash, followed by ~~twenty-five~~ twenty-nine

payments by the best available rate obtained through a competitive bid of qualified bidders. Annual payments after the initial payment must be made by the lottery within seven days of the anniversary date on which the bonds were purchased to fund the annuity.

5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

6. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective January 31, 2010; amended effective December 1, 2010; October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-04. Megaplier® option.

1. The Megaplier® option is a limited extension of the MEGA MILLIONS® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply or increase the amount of a set prize.

2. A qualifying play is a single MEGA MILLIONS® play for which the player pays an extra one dollar for the Megaplier® option. Megaplier® does not apply to the grand prize.

3. A qualifying play which wins one of the ~~seven lowest~~ set prizes will be multiplied by the number selected, two through ~~four~~ five, in a separate random Megaplier® drawing. ~~The match 5+0 prize, for players selecting the Megaplier® option, shall be paid one million dollars unless a higher limited promotional dollar amount is announced by the game group or unless a lower dollar amount is announced by the game group under its limitation of liability rules.~~

4. A single number from a series of ~~twenty-one~~ fifteen numbers is selected according to the following frequency: two number 2s, ~~seven~~ four number 3s, ~~and twelve~~ three number 4s, and six number 5s. The game group may change one or more of the multiplier numbers ~~or the match 5+0 Megaplier® prize amount, or both,~~ for a special promotion.

5. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying Megaplier® will pay the amounts shown below when matched with the Megaplier® number drawn:

MEGA MILLIONS® Pays Instead

~~Matches Per Play~~	~~Set Prize Amount~~	~~Prize Amount With Megaplier® Purchase~~
~~5 white + 0 gold~~	~~$250,000~~	~~$1,000,000~~

Prize Amounts With Megaplier® Purchase and Multiplier

Matches Per Play	Set Prize Amount	5X	4X	3X	2X
5 white + 0 gold	$1,000,000	$5,000,000	$4,000,000	$3,000,000	$2,000,000
4 white + 1 gold	~~$10,000~~ $5,000	$25,000	~~$40,000~~ $20,000	~~$30,000~~ $15,000	~~$20,000~~ $10,000
4 white + 0 gold	~~$150~~ $500	$2,500	~~$600~~ $2,000	~~$450~~ $1,500	~~$300~~ $1,000
3 white + 1 gold	~~$150~~ $50	$250	~~$600~~ $200	~~$450~~ $150	~~$300~~ $100
3 white + 0 gold	$5	$25	$20	$15	$10
2 white + 1 gold	~~$10~~ $5	$25	~~$40~~ $20	~~$30~~ $15	~~$20~~ $10
~~3 white + 0 gold~~	~~$7~~		~~$28~~	~~$21~~	~~$14~~
1 white + 1 gold	~~$3~~ $2	$10	~~$12~~ $8	~~$9~~ $6	~~$6~~ $4
0 white + 1 gold	~~$2~~ $1	$5	~~$8~~ $4	~~$6~~ $3	~~$4~~ $2

Multiplier numbers do not apply to the grand prize ~~or to the match 5+0 prize~~.

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, a Megaplier® prize will be a multiple of two through ~~four~~ five for the new set prize amount ~~for the seven lowest set prizes~~. For example, if the match 4+1 set prize amount of ~~ten~~ five thousand dollars becomes ~~five~~ two thousand dollars under the game group's rules, a Megaplier® player winning that prize amount when a "4" has been drawn would win ~~twenty~~ eight thousand dollars (~~$5,000~~ $2,000 x 4). ~~The match 5+0 prize may be reduced as announced by the game group.~~

6. The following table reflects the probability of the Megaplier® numbers being drawn:

Megaplier®	Probability of Prize Increase
5X - Prize won times 5	6 in 15
4X - Prize won times 4	~~12 in 21~~ 3 in 15
3X - Prize won times 3	~~7 in 21~~ 4 in 15
2X - Prize won times 2	~~2 in 21~~ 2 in 15

History: Effective January 31, 2010; amended effective September 14, 2010; December 1, 2010; October 19, 2013.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

TITLE 30

GAME AND FISH DEPARTMENT

JANUARY 2014

CHAPTER 30-03-01.1

30-03-01.1-04. License limitations. Retail or wholesale bait vendor licenses are issued for a calendar year to one person only. An individual may be issued only one wholesale license per calendar year. The holder of a retail bait vendor license may sell legal live bait and legal live baitfish at retail only, at one specified selling location per license. A wholesale bait vendor may only sell legal live bait and legal live baitfish to licensed bait vendors or for permitted private fish pond stocking. A person licensed as a wholesaler in any state may not act as an assistant under a North Dakota wholesaler license. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009; October 1, 2010; January 1, 2014.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-07. Equipment for holding and transport. Persons commercializing in or transporting legal live bait and legal live baitfish shall use equipment capable of maintaining such live bait in a healthy and lively condition at all times, except for rainbow smelt which must be killed immediately after capture. Each species of legal live baitfish must be kept separate from other species of legal live baitfish in holding and transport equipment. The premises and equipment of all persons commercializing in live bait shall be open to the inspection of the director or any of the director's duly appointed agents at any time. Equipment used for transporting live bait into or within the state, including bedding (medium), must be free of aquatic nuisance species. Water used to transport live bait into the state must be from a potable or ground water (well) source and shall not contain any aquatic vegetation. Retail bait vendors must keep all aquatic vegetation and aquatic nuisance species out of bait tanks at their point of sale. Any bait vendor

who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014.
General Authority: NDCC 20.1-06-14, 20.1-17-01
Law Implemented: NDCC 20.1-06-14, 20.1-17-01, 20.1-17-06

30-03-01.1-08. Interstate transport. ~~It is illegal to import fathead minnows or stickleback into the state. It is illegal to import other live baitfish or live bait into the state except with a permit issued by the director and only in the manner approved by the director.~~ Only the following live baitfish and live bait may be imported into the state and only with a permit issued by the director and in the manner approved by the director: white suckers, leeches, and worms (to include nightcrawlers and wax worms). It is illegal to import all other live bait. It is illegal to export live baitfish or live bait out of the state except with a permit issued by the director and only in the manner approved by the director. It is illegal to transport live baitfish or live bait through the state except with a permit issued by the director and only in the manner approved by the director. Permit applications must be received by the director a minimum of forty-eight hours prior to any planned import or export of live baitfish or live bait.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014.
General Authority: NDCC 20.1-02-05(22), 20.1-06-01, 20.1-06-14
Law Implemented: NDCC 20.1-02-05(22), 20.1-06-01, 20.1-06-14

30-03-01.1-12. Equipment for taking legal live bait and legal live baitfish. A person possessing only a retail license may take legal live bait and legal live baitfish 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 bait and legal live baitfish with fish traps less than ~~five~~ seven feet [~~1.5~~ 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.

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.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-04

30-03-01.1-13. Prohibited waters for taking legal live bait and legal live baitfish. Licensees shall not be permitted to take ~~legal~~ live bait and ~~legal~~ live baitfish from the following:

1. Waters managed as recreational fisheries (except the Missouri River system where rainbow smelt may be taken);

2. Waters designated by the department as infested with prohibited or regulated aquatic nuisance species (except the Missouri River system where rainbow smelt may be taken);

3. The United States fish and wildlife service's wildlife development areas, waterfowl production areas, or refuges;

4. The department's wildlife management areas (except the Missouri River system where rainbow smelt may be taken); or

5. Any waters that have been licensed as a private fish hatchery in the past three years.

~~Refer to the current fishing proclamation for commercial season and other restrictions for harvesting leeches by licensed bait dealers.~~ Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014.
General Authority: NDCC 20.1-06-14, 20.1-17-01
Law Implemented: NDCC 20.1-06-04, 20.1-17-01, 20.1-17-06

30-03-01.1-15. Inspections and records. Equipment used to capture, transport, or hold, and shipments of, legal live bait and legal live baitfish are subject to inspections by duly appointed agents of the director. Each licensee trapping, seining, or purchasing legal live bait and legal live baitfish for sale must accurately complete forms furnished by the department. Each licensee shall keep current (within a month) records at the retail licensee's point of sale or the wholesaler licensee's permanent business address, or both. Records must be open to inspection by the department. A copy of these records shall be submitted to the director no later than thirty days following expiration of the license. Records must be retained by the licensee ~~for a period of two years after the expiration of any license issued under this section~~ until submitted to the department. Any bait

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

History: Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

CHAPTER 30-03-03

30-03-03-03. Construction. ~~Any structure used as a fishhouse shall be constructed of material that will allow it to float and to be readily removable from the ice at any time.~~ Any structure used as a fish house or dark house, to include campers, that is required to have the owner's name and address or telephone number inscribed on it, shall be constructed of material that will allow it to float and be readily removable from the ice at any time.

History: Amended effective September 1, 1993; April 1, 2006; April 1, 2009; January 1, 2014.
General Authority: NDCC 20.1-06-07
Law Implemented: NDCC 20.1-06-07

CHAPTER 30-04-02
PUBLIC USE OF GAME OR FISH MANAGEMENT AREAS

Section	
30-04-02-01	Public Access and Use
30-04-02-02	Public Hunting, Fishing, and Trapping [Repealed]
30-04-02-03	Motor Vehicles
30-04-02-04	Watercraft
30-04-02-05	Firearms
30-04-02-06	Littering and Abandonment of Property
30-04-02-07	Removal and Destruction of Property
30-04-02-08	Private Property and Structures
30-04-02-09	Cropping, Haying, and Commercial Enterprises
30-04-02-10	Animals Prohibited - Exceptions
30-04-02-11	Camping
30-04-02-12	Group Activities
30-04-02-13	Other Uses [Repealed]
30-04-02-14	Noise
30-04-02-14.1	Tree Stands and Ground Blinds
30-04-02-14.2	Dogs
30-04-02-15	Department Work
30-04-02-16	Glass Beverage Containers or Kegs Prohibited
30-04-02-17	Baiting
30-04-02-18	Fireworks, Model Rocket Engines, or Combustible or Explosive Materials Prohibited
30-04-02-19	Penalty
30-04-02-20	Paintballing Prohibited
30-04-02-21	Geocaching Prohibited

30-04-02-01. Public access and use. All state wildlife game or fish management areas are open for public hunting, fishing, and trapping, or other compatible public use, except as otherwise provided in this chapter, governor's proclamation, or as posted at public road entry points. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee or the amount as written or posted, if different. As used in this chapter, "wildlife management area" or "WMA" has the same meaning as "game or fish management area" in North Dakota Century Code chapter 20.1-11.

History: Amended effective April 1, 1986; April 1, 2006; January 1, 2014.
General Authority: NDCC 20.1-11-05
Law Implemented: NDCC 20.1-11-05

30-04-02-05. Firearms. Use of firearms on wildlife management areas is allowed, except in a reckless and indiscriminate manner, and as otherwise posted at public road entry points. A person discharging a firearm on a department-designated target range shall not be considered to be engaging in indiscriminate shooting. The use of tracer rounds or exploding targets, or both, is

prohibited on all 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; January 1, 2014.
General Authority: NDCC 20.1-11-05
Law Implemented: NDCC 20.1-11-05

30-04-02-14.1. Tree stands and ground blinds. No person may construct or use a permanent tree stand or permanent steps to a tree stand or permanent ground blind on any wildlife management area. Portable tree stands and portable steps, screw-in steps, ~~and~~ natural tree stands, and portable ground blinds may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of any tools. Ladder-type stands that lean against the tree are portable stands. A notched board placed in a tree crotch is a portable stand. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. ~~A metal or plastic tag must be attached to each unattended tree stand. This tag must display the owner's name, address, and telephone number.~~ The owner's name, city, and telephone number, the owner's North Dakota hunter education number, or a unique identification number issued by the department must be on the tree stand or portable ground blind, or both, and be readable from the ground. Tree stands and ground blinds do not preempt hunting rights of others in the vicinity of the tree stand or ground blind. Tree stands ~~and~~, steps, and ground blinds may not be put up before August twentieth of the year, and they shall be taken down by January thirty-first of the following year. Stands ~~and~~, steps, and ground blinds not removed by the thirty-first of January are considered abandoned property and are subject to removal and confiscation by the director or the director's designee. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 1986; amended effective April 1, 2006; April 1, 2009; January 1, 2014.
General Authority: NDCC 20.1-11-05
Law Implemented: NDCC 20.1-11-05

TITLE 33

STATE DEPARTMENT OF HEALTH

JANUARY 2014

CHAPTER 33-06-05

33-06-05-01. Requirements.

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

   a. "Advisory committee on immunization practices" refers to a panel of experts in fields associated with immunization who have been selected by the secretary of the United States department of health and human services to provide advice and guidance to the secretary, the assistant secretary for health, and the centers for disease control and prevention on the most effective means to prevent vaccine-preventable diseases.

   b. "Age-appropriate immunizations" refers to the vaccines a child should receive based on age and previous immunization history as recommended by the advisory committee on immunization practices of the United States department of health and human services and outlined by the North Dakota immunization schedule.

   c. "Beliefs" as used in subsection 3 of North Dakota Century Code section 23-07-17.1 means sincerely held religious, philosophical, or moral beliefs which are not a pretense for avoiding legal requirements.

   d. "Institution" includes all early childhood facilities, head start programs, preschool educational facilities, public and private kindergartens, and elementary, middle, and high schools operating in North Dakota.

   e. "Institutional authority" means anyone designated by the governing body of an institution.

   f. "Medical exemption" means an exemption from an immunization requirement based on a form signed by a licensed physician stating that the physical condition of the child seeking the exemption is

such that the vaccine administered would endanger the life or health of the child.

2. **Minimum requirements.**

   a. Minimum requirements for children attending early childhood facilities, head start programs, and preschool educational facilities shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, rubella, haemophilus influenzae type B disease, varicella (chickenpox), pneumococcal disease, rotavirus, and hepatitis A.

   b. Minimum requirements for children attending kindergarten through grade twelve shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, rubella, varicella (chickenpox), and meningococcal disease.

3. **Effective dates.**

   a. Effective with the 1992-93 school year, a second dose of measles, mumps, and rubella vaccine is required for school entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the requirement so those students transferring into North Dakota schools are added to the measles, mumps, and rubella immunization cohort.

   b. Effective with the 2000-01 school year, a student must complete the hepatitis B vaccine series prior to entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the hepatitis B immunization requirement so those students transferring into North Dakota schools are added to the hepatitis B immunization cohort.

   c. Effective January 1, 2004, in order to attend an early childhood facility, head start program, or preschool educational facility, each child must be adequately immunized against varicella (chickenpox) disease according to the advisory committee on immunization practices.

   d. Effective with the 2004-05 school year, a student must receive the varicella (chickenpox) vaccine before being admitted into any kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the varicella immunization requirement so those students transferring into North Dakota schools are added to the varicella immunization cohort.

e. Effective January 1, 2008, in order to attend an early childhood facility, head start program, or preschool educational facility, each child must be adequately immunized according to the advisory committee on immunization practices against pneumococcal disease, rotavirus, and hepatitis A.

f. Effective with the 2008-09 school year, a student must receive a second dose of varicella (chickenpox) vaccine before being admitted into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent school year, the next higher grade will be included in the second dose varicella (chickenpox) immunization requirement so those students transferring into North Dakota schools are added to the second dose varicella (chickenpox) immunization cohort.

g. Effective with the ~~2008-09~~ 2014-15 school year, a student must receive meningococcal and tetanus, diphtheria, and pertussis (tdap) vaccine before being admitted into any ~~middle school (sixth or~~ seventh grade~~)~~.

4. **Exemptions.** A child with a medical or a beliefs exemption is exempt from any one or all of the immunization requirements. A physician must sign an exemption form indicating the vaccines that are included in the medical exemption. A parent or guardian must sign an exemption form stating that the child has a beliefs exemption and indicate which vaccines are exempt because of beliefs. A child with a reliable history of chickenpox disease is exempt from varicella (chickenpox) immunization requirements. A physician or parent or guardian must sign an exemption form stating that the child has had chickenpox disease. Exemption forms must be kept on file with the immunization records at the child's school, early childhood facility, head start program, or preschool educational facility.

5. **Recordkeeping and reporting.** Records and reports requested by the state department of health shall be completed and submitted to the state department of health.

a. Certificates of immunization, a North Dakota immunization information system (NDIIS) record, or other official proof of immunization must be presented to the designated institutional authority before any child is admitted to an institution. ~~The parent or guardian of a child claiming a medical or beliefs exemption shall present an appropriately signed statement of exemption to the designated institutional authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility.~~

b. Upon request by the institutional authority and approval by the department, the department shall provide access to the NDIIS

by institutional authority. The department of health shall disclose immunization records maintained by the NDIIS to an institutional authority to fulfill the required proof of immunization.

c. The parent or guardian of a child claiming a medical or beliefs exemption shall present an appropriately signed statement of exemption to the designated institutional authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility.

~~b.~~ d. The school or early childhood facility immunization summary report must be submitted to the state department of health by November first of each year or such other annual date as the department may designate.

6. **Appointment of an institutional authority.**

a. An institutional authority shall be appointed for each institution by its governing board or authorized personnel. The authority must be an employee of such institution.

b. The name of the designated institutional authority, the institution, address, and telephone number shall be submitted to the appropriate governing state department by July first of each year.

7. **Provisional admission - Exclusion.** Any child admitted to school or early childhood facility under the provision that such child is in the process of receiving the required immunizations shall be required to receive the immunizations according to the recommended schedule set forth by the state department of health. Any child not adhering to the recommended schedule shall provide proof of immunization or a certificate of immunization within thirty days of enrollment or be excluded from school or early childhood facility.

History: Amended effective November 1, 1979; September 1, 1991; January 1, 1998; February 1, 2000; January 1, 2004; January 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-07-17.1

ARTICLE 33-21

CESSPOOLS, SEPTIC TANKS, PRIVIES

Chapter

33-21-01 Operation of Cleaning, Pumping, and Servicing of Cesspools, Septic Tanks, or Privies [Repealed]

33-21-02 Servicing of Septic or Holding Tanks, Privies, or Portable Restrooms

CHAPTER 33-21-01
OPERATION OF CLEANING, PUMPING, AND SERVICING OF CESSPOOLS, SEPTIC TANKS, OR PRIVIES

[Repealed effective January 1, 2014]

~~Section~~

~~33-21-01-01 Permits Required~~

~~33-21-01-02 Equipment Required~~

~~33-21-01-03 Spills~~

~~33-21-01-04 Proper Disposal~~

~~33-21-01-05 Authority~~

~~33-21-01-06 Tag to be Displayed~~

CHAPTER 33-21-02
SERVICING OF SEPTIC OR HOLDING TANKS, PRIVIES, OR PORTABLE RESTROOMS

Section	
33-21-02-01	Authority
33-21-02-02	Scope and Purpose
33-21-02-03	Definitions
33-21-02-04	Septic Pumper Classification
33-21-02-05	Permit Application and Renewal
33-21-02-06	Training Requirements
33-21-02-07	Vehicles and Equipment
33-21-02-08	Septage Disposal
33-21-02-09	Spill Reporting and Cleanup
33-21-02-10	Recordkeeping and Reporting Requirements

33-21-02-01. Authority. The state department of health has been authorized to provide and administer this chapter relating to septic system servicing under the provisions of North Dakota Century Code section 61-28-04.1.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-02. Scope and purpose. This chapter establishes procedures governing the servicing of septic systems, including portable restrooms, holding tanks, and similar devices that receive domestic wastewater and establishes standards for the use and disposal of wastewater from those sources while protecting the general public and waters of the state from contamination by septage.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-03. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 61-28, except:

1. "Incorporation" means the mixing of septage with topsoil to a minimum depth of four inches within forty-eight hours.

2. "Injection" means the subsurface placement of septage to a depth of four inches to twelve inches.

3. "Land application" means the spraying or spreading of septage onto the land surface, the injection of septage below the land surface, or the incorporation of septage into the soil.

4. "Litter" means nonbiodegradable material, such as plastics or glass.

5. "Nonpublic contact site" means land not frequently visited or used by the public. Examples include agricultural land, forests, and reclamation sites.

6. "Portable restroom" means a self-contained portable enclosure containing a holding tank designed to directly receive human excrement.

7. "Privy" means a self-enclosure over a watertight structure located in a pit designed to directly receive human excrement.

8. "Public contact site" means land with a high potential for contact by the public. Examples include public parks, ballfields, golf courses, and cemeteries.

9. "Rural single-family residence" means a dwelling occupied by a single family or household situated on land greater than five acres and used primarily for agricultural or horticultural purpose. Examples include growing and harvesting crops and raising livestock.

10. "Snow-covered ground" means ground upon which the snow is at a depth greater than eight inches.

11. "Spill" means to cause or allow to fall, flow, or run out so as to be lost or wasted.

12. "Wastewater treatment facility" means a treatment system permitted by the department and designed to remove biological or chemical waste products from water.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-04. Septic pumper classification.

1. Class I classification is defined as a septic system servicer that operates three or more permitted servicing vehicles or at least one portable toilet servicing vehicle.

2. Class II classification is defined as all septic system servicers not classified as class I.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-05. Permit application and renewal.

1. Permit required. A person wishing to engage in the business of servicing septic systems, portable restrooms, holding tanks, and similar devices that receive domestic wastewater shall submit an application for a permit to the department on a form provided by the department.

2. Applicant information. All applicants shall provide the following information to the department:

   a. The full name and physical business address of the applicant;

   b. The mailing address of the applicant, if different from the physical address;

   c. Septic system servicers that have held a permit in North Dakota within the past five years must submit records in accordance with subsection 4;

   d. A copy of a North Dakota state training certificate or other acceptable training course as preapproved by the department;

   e. A list of all counties in which business is conducted;

   f. A list of all disposal methods and land application sites, not exempted under North Dakota Century Code section 61-28-04.1, that the applicant proposes to use, if applicable; and

   g. The signature of the landowner, facility operator, or designated representative of the owner or operator, on a designated form granting permission to use the site for land application, disposal, or treatment.

3. Land application. Class I septic system servicers shall obtain the department's approval of all land application sites under subsection 2 of section 33-21-02-08. In addition, class I applicants shall include the following information on all land application sites–even sites that have already been approved–that they propose to use for the permit period:

   a. The name of the property owner;

   b. The street address or directions to the site;

   c. The location of the property by township, range, section, and quarter section or the latitude and longitude of the property in degrees decimal;

d. The type of vegetation on the land application site (fallow land, pasture, range, forest, or other) and the nitrogen requirements for the vegetation;

e. The estimated depth in feet to seasonally high ground water at the site and the basis for the estimates;

f. A statement of the specific soil type (clay, gravel, sandy loam, or other) at each site;

g. The approximate slope of the land;

h. The acreage available for land application;

i. A proposed summer and winter disposal operation and maintenance plan for each land application site, including provisions for access control and the types and sources of wastes to be managed on the site; and

j. Indicate land application sites to be utilized between November fifteenth and April first.

4. Permit renewals. A permit shall expire on December thirty-first of each year. A permitholder shall have a grace period to submit a renewal application with the appropriate application fee to the department by March first of the following year. After March first, a new permit application with the appropriate application fee shall be submitted to the department. Until the new permit application is approved by the department, a septic system servicer is not permitted to operate.

a. An applicant for permit renewal must submit the same information required of a new permit applicant.

b. In addition, septic system servicers shall submit an annual report of disposal activities to the department when applying for a permit renewal. The annual report must include:

(1) A list of the disposal sites used, including all land application sites and wastewater treatment facilities;

(2) The type of treatment done to address pathogen and vector control requirements;

(3) The total volume of gallons handled; and

(4) A record of all spills.

5. Permit transfers. Septic system servicers must notify the department upon sale or transfer of business within ninety days. Upon notification

and the new owner's written agreement to comply with the permit's terms, the new owner becomes the permitholder for the remainder of the calendar year and shall submit a renewal application in accordance with subsection 4.

6. Fees. An applicant shall pay the permit or renewal fee to the department at the time the permit or renewal application is submitted. A permit may not be issued or renewed prior to payment of the appropriate fee as follows:

   a. A new permit applicant shall pay an application fee of one hundred dollars and a fifty dollar fee per servicing vehicle.

   b. A permitholder shall pay a renewal fee of fifty dollars per servicing vehicle.

   c. A new servicing unit may be added to an existing permit for a fee of fifty dollars.

   d. A permit replacement fee of twenty-five dollars shall apply. Examples include lost or damaged plates.

7. Application review. The department shall review each submitted application for a new or renewed permit. If additional information is required, the department shall notify the applicant within thirty days after the department receives the application and processing shall be postponed until the application is complete. If the department does not receive the requested information within ninety days of the request, a new application may be required. The department shall review the completed application and either issue, deny, or renew a permit within thirty days after the completed application is received.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-06. Training requirements.

1. Septic system servicers and their employees engaged in the servicing of septic systems are required to pass an annual examination provided by the department.

2. Septic system servicers are required to attend a training course provided by the department once every five years.

3. Other examinations or training courses taken may be substituted for the requirements in subsections 1 and 2 with the department's prior approval.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-07. Vehicles and equipment.

1. Septic system servicers shall allow the department to inspect the equipment used in servicing at any reasonable time and place designated by the department.

2. Vehicles used in servicing shall meet the following identification requirements:

   a. A valid septic pumper plate, as provided by the department, shall be prominently displayed on the rear of the servicing unit.

   b. The septic system servicer's name shall be displayed on the side of the vehicle in writing no less than three inches tall with one-half-inch minimum thickness and in a color distinct from its background.

3. All servicing vehicles shall conform to the following:

   a. Be maintained in operational condition.

   b. Expressly used for the hauling or servicing of septage or municipal wastewater treatment sludge and for no other purpose. However, the use of the vehicle for fire protection service, oil recovery, and industrial wastes not regulated under this chapter is permissible if the tank is flushed or cleaned as necessary prior to and after use.

   c. Stored in a manner which will not cause a public nuisance.

4. All approvable holding tanks or containers shall be attached to the vehicle by welding or bolts on a truck chassis.

   a. Holding tanks shall be constructed of suitable metal or materials approved by the department.

   b. Each tank shall be strong enough for all conditions of operation, leakproof, contain inertia baffles, and be designed to be kept tightly closed to prevent spillage or escape of odors while in transit or storage.

c. Discharge valves on tanks shall be watertight, capped when not in use, and constructed and located so as to permit unobstructed discharge.

5. Pumps shall be adequate for the required service. The installation shall be designed to prevent backflow or leakage. Connections shall be provided with caps or seals.

6. Hoses and piping, when not in use, shall be stored in a manner to prevent leakage or dripping of septage in transit.

7. All servicing equipment used for land application of septage shall have a splash plate or some other department-approved method or device to facilitate uniform septage application in land spreading.

8. Facilities used for washing the vehicles, tanks, implements, and tools shall be designed to prevent a public nuisance and shall comply with North Dakota Century Code chapter 61-28.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-08. Septage disposal.

1. Septage must be disposed of at a department-permitted wastewater treatment facility, or it may be land-applied. All septic system servicers shall submit disposal site information to the department with their permit applications under subsection 2 of section 33-21-02-05.

2. Class I septic system servicers shall obtain the department's written preapproval for land application sites. Approval requests may be submitted with a permit application or during the term of the permit. Approval requests not included in the permit application shall include the information on the proposed land application site listed in subsection 3 of section 33-21-02-05. If the approval request contains all the required information, the land application sites may be given conditional approval within thirty days of submission. Full approval is contingent on a site assessment conducted by the department and will be granted automatically unless otherwise notified by the department. The department may not approve sites that may cause harm to the environment or threaten the public. Once given full approval by the department, land application sites shall retain approval for a period of not less than five years, unless additional future information indicates a change in the environmental status of the property. Examples for cause of termination of approval include excessive runoff, odor complaints, illegal disposal, etc.

Class II septic system servicers shall follow all general land application requirements as outlined in subsections 4 through 8.

3. A septic system servicer land applying septage from a rural single-family residence on property owned or leased by the owner or lessee of the rural single-family residence is exempt from obtaining the department's written approval for the land application site. General land application site requirements still apply and must be followed.

4. General land application site requirements shall be followed by all septic pumper classifications, including rural single-family exemptions, and are as follows:

   a. Application of septage is not allowed on a designated one hundred-year floodplain as defined by federal emergency management agency flood maps nor below the ordinary high water mark.

   b. Application of septage is not allowed on areas of a site ponded with water or septage.

   c. Septage cannot be applied when soils are saturated.

   d. Septage cannot be applied by spraying from public roads or across road right of ways.

   e. All septage that is land-applied must be uniformly distributed over the area by use of a distribution device, such as a splash plate or spreader.

   f. Measures must be taken to ensure that the ponding or septage and runoff does not occur.

   g. Slope restrictions are as follows:

      (1) Surface application, injection, or immediate incorporation of septage is allowed on slopes six percent and less.

      (2) Injection of septage is required on slopes greater than six percent up to twelve percent.

      (3) Land application of septage is not allowed on slopes greater than twelve percent.

   h. Separation distances are as follows:

      (1) Private drinking water wells must have two hundred feet of separation from land application of septage.

(2) Public drinking water supply wells must have one thousand feet of separation from land application of septage.

(3) Irrigation wells must have fifty feet of separation from land application of septage.

(4) Residences must have one thousand feet of separation from land application of septage, unless permission is obtained by the owner and resident to reduce this distance.

(5) Surface water features must have two hundred feet of separation distance from land application of septage.

(6) Public contact sites, including roads, must have a separation distance of two hundred feet from surface-applied and incorporated septage. A separation distance of fifty feet is required for injection of septage.

i. Public contact sites shall be posted with no trespassing signs for thirty days after application.

j. Septage shall be applied at a rate of less than twenty thousand gallons per acre per day and less than one hundred pounds of nitrogen per acre per year. The department may waive these rates upon a site-by-site review basis.

k. Land application sites shall be maintained free of liter.

l. The discharge from the servicing units shall be controlled so that pooling or ponding of septage during land application does not occur.

5. Pathogen reduction measures shall be taken by all classes in accordance with one of the following alternatives:

a. Alternative 1. Septic system servicers shall pump domestic septage from a septic tank or holding tank and land apply it without treatment. Crop, grazing, and site restrictions apply.

(1) Crop restrictions:

(a) Food crops with harvested parts that touch the septage and soil mixture and are totally aboveground shall not be harvested for fourteen months after application of domestic septage.

(b) Food crops with harvested parts below the surface of the land shall not be harvested for thirty-eight months after application of domestic septage.

(c) Animal feed, fiber, and those food crops that do not touch the soil surface shall not be harvested for thirty days after the application of the domestic septage.

(d) Turf grown on land where domestic septage is applied shall not be harvested for one year after application of the domestic septage when the harvested turf is placed on either a lawn or land with a high potential for public exposure, unless otherwise specified by the permitting authority.

(2) Grazing restrictions. Animals shall not be allowed to graze on the land for thirty days after application of domestic septage.

(3) Site restrictions. Public access to land with a low potential for public exposure shall be restricted for thirty days after application of domestic septage. Examples of restricted access include remoteness of site, posting with no trespassing signs, or simple fencing.

b. Alternative 2. Septic system servicers shall pump domestic septage from a septic tank or holding tank that has had its pH raised to twelve or higher by the addition of alkaline material and, without addition of more alkaline material, the septage must remain at a pH level of twelve or higher for at least thirty minutes prior to being land-applied. Crop restrictions apply.

(1) Crop restrictions:

(a) Food crops with harvested parts that touch the septage and soil mixture and are totally aboveground shall not be harvested for fourteen months after application of domestic septage.

(b) Food crops with harvested parts below the surface of the land shall not be harvested for twenty months after application of domestic septage when the domestic septage remains on the land surface for four months or longer prior to incorporation into the soil.

(c) Food crops with harvested parts below the surface of the land shall not be harvested for thirty-eight months after application of domestic septage when the domestic septage remains on the land surface for less than four months prior to incorporation into the soil.

(d) Animal feed, fiber, and those food crops that do not touch the soil surface shall not be harvested for thirty days after application of the domestic septage.

(e) Turf grown on land where domestic septage is applied shall not be harvested for one year after application of the domestic septage when the harvested turf is placed on either a lawn or land with a high potential for public exposure, unless otherwise specified by the permitting authority.

c. Other equivalent alternatives may be acceptable with prior department approval.

6. Vector attraction reduction measures shall be taken by all classes in accordance with one of the following alternatives:

a. Alternative 1. Septic system servicers shall inject domestic septage below the surface of the land, and no significant amount of the septage shall be present on the land surface within one hour after the septage is injected.

b. Alternative 2. Septic system servicers shall incorporate domestic septage applied to the land surface into the soil surface plow layer within forty-eight hours after application.

c. Alternative 3. Septic system servicers shall raise the pH of domestic septage to twelve or higher by addition of alkaline material and, without addition of more alkaline material, the septage must remain at a pH level of twelve or higher for thirty minutes prior to being land-applied.

d. Other equivalent alternatives may be acceptable with prior department approval.

7. Snow-covered ground application is acceptable if there are less than eight inches of snow and less than a six percent slope onsite and according to general land application requirements of subsection 4 of section 33-21-02-08.

8. Storage of septage greater than twenty-five thousand gallons requires department approval. All storage sites shall be designed and maintained to prevent a public nuisance and shall be in compliance with North Dakota Century Code chapter 61-28.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-09. Spill reporting and cleanup.

1. Septic system servicers and their employees shall report all spills to the department as soon as possible, but within twenty-four hours. The

septic system servicers shall keep a copy of the spill report for five years. The report shall include:

a. Spill location;

b. Spill volume;

c. Type of material spilled; and

d. Steps taken to clean up the spill.

2. Septage shall be transported in a manner where it will not leak or spill onto public roads or into areas where it could enter surface or ground water. A written procedure for spill and accident cleanup must be developed by each permitholder, and a copy of the procedure must be kept in each permitted septic vehicle. When a spill occurs, a septic system servicer and any responsible employees shall:

a. Contain the spill to minimize the impact to the environment and general public;

b. Notify the department of all spills in accordance with notification requirements of subsection 4 of section 33-16-02.1-11;

c. Clean the spill area to render it harmless to humans and the environment; and

d. Properly dispose of spilled material.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

33-21-02-10. Recordkeeping and reporting requirements.

1. Septic system servicers must keep records of all their servicing and disposal activities. Each septic system servicer shall maintain records for not less than five years. Records must be available to the department for review upon request.

2. The records must contain:

a. The origin of the septage;

b. The location of the site where the septage is applied or taken;

c. The number of acres to which septage is applied at each site;

d. The date and time of each septage application;

e. Crop or vegetation on each site during the year;

f. The gallons of septage which are applied to the site during the specified three hundred sixty-five-day period;

g. A description of how the pathogen requirements are met for each land application of septage; and

h. A description of how the vector attraction reduction requirements are met for each land application of septage.

History: Effective January 1, 2014.
General Authority: NDCC 61-28-04, 61-28-04.1
Law Implemented: NDCC 61-28-04.1

CHAPTER 33-31-03

33-31-03-07. Salvaged food operator license fee. Before any salvaged food operator engages in the distribution or selling of distressed or salvaged food, that operator must be licensed by the department. Licenses expire on December thirty-first following the date of issuance. The annual license fee for a salvaged food distributor is ~~eighty~~ one hundred dollars.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-09-24

CHAPTER 33-33-01

33-33-01-07. License fees. The department shall charge the following fees for licenses to operate mobile home parks in this state:

1. For a mobile home park containing at least three but not more than ten lots, ~~seventy-five~~ ninety dollars.

2. For a mobile home park containing at least eleven but not more than twenty-five lots, one hundred ~~ten~~ thirty-five dollars.

3. For a mobile home park containing at least twenty-six but not more than fifty lots, one hundred ~~forty-five~~ seventy-five dollars.

4. For a mobile home park containing ~~more than fifty~~ at least fifty-one but not more than one hundred lots, ~~one~~ two hundred ~~eighty~~ twenty dollars.

5. For a mobile home park containing at least one hundred one but not more than one hundred fifty lots, two hundred seventy dollars.

6. For a mobile home park containing at least one hundred fifty-one but not more than two hundred lots, three hundred twenty dollars.

7. For a mobile home park containing at least two hundred one but not more than two hundred fifty lots, three hundred seventy dollars.

8. For a mobile home park containing more than two hundred fifty lots, four hundred twenty dollars.

The department shall waive the license fee for any mobile home park owned by the state, a municipality, or a nonprofit organization.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-10-02, 23-10-07

CHAPTER 33-33-02

33-33-02-07. License fees. The department shall charge the following fees for licenses to operate trailer parks or campgrounds in this state:

1. For a trailer park or campground containing at least three but not more than ten lots, ~~seventy-five~~ ninety dollars.

2. For a trailer park or campground containing at least eleven but not more than twenty-five lots, one hundred ~~ten~~ thirty-five dollars.

3. For a trailer park or campground containing at least twenty-six but not more than fifty lots, one hundred ~~forty-five~~ seventy-five dollars.

4. For a trailer park or campground containing ~~more than fifty~~ at least fifty-one but not more than one hundred lots, ~~one~~ two hundred ~~eighty~~ twenty dollars.

5. For a trailer park or campground containing at least one hundred one but not more than one hundred fifty lots, two hundred seventy dollars.

6. For a trailer park or campground containing at least one hundred fifty-one but not more than two hundred lots, three hundred twenty dollars.

7. For a trailer park or campground containing at least two hundred one but not more than two hundred fifty lots, three hundred seventy dollars.

8. For a trailer park or campground containing more than two hundred fifty lots, four hundred twenty dollars.

The department shall waive the license fee for any trailer park or campground owned by the state, a municipality, or a nonprofit organization.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-10-07

CHAPTER 33-33-03

33-33-03-02. License issuance, suspension, revocation, and reinstatement.

1. It shall be unlawful for any person to engage in the operation of one or more vending machines in North Dakota who does not possess a currently valid vending license from the department. Only persons who comply with the provisions of this chapter shall be entitled to receive such a license. The annual license fee for operating a vending machine is ~~twenty-five~~ thirty dollars.

2. Any person desiring to operate one or more vending machines in North Dakota shall make application in writing to the department on forms provided by the department. The applicant shall provide the following information:

   a. The applicant's full name, residence, and post-office address.

   b. The name and location of the commissary or commissaries where the vending machines are to be located and the name and location of the company or companies servicing the vending machines.

   c. The identity of the products to be dispensed through vending machines.

   d. The signature of the applicant or applicants.

3. Upon receipt of the application, the department shall issue a license to the applicant. The license shall not be transferable. The operator's license shall be displayed and be readily visible in the immediate area of the vending machines. In order to retain an operator's license, the operator shall comply with the requirements of these regulations.

4. After an opportunity for a hearing, and following the procedures provided in section 33-33-03-04, an operator's license may be suspended temporarily by the department upon violation by the licenseholder of any of the provisions of this chapter or may be revoked upon serious or repeated violation of such section, or for interference with the department's performance of its duties.

5. Notwithstanding any other provisions of this chapter, whenever the department finds unsanitary or other conditions involving the operation of any vending machine or commissary which, in the judgment of the department, constitutes a substantial hazard to the public health, it may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specifying corrective action to be taken and, if deemed necessary, requiring immediate discontinuance of operation. Such order shall be effective immediately and shall apply

only to the vending machine, commissary, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the department, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and upon receipt of a written request from the operator, the department shall make a reinspection to determine whether operations may be resumed.

6. After any hearing held under the provisions of this chapter, the department shall sustain, modify, or rescind any notice or order considered in the hearing.

7. Any operator whose license has been suspended may at any time make application for the reinstatement of the license. Within ten days after the receipt of a written application, accompanied by, or including, a statement signed by the operator to the effect that in the operator's opinion the violated term or terms of this chapter have been complied with, the department shall make a reinspection. If the applicant is again complying with the terms of this chapter, the license shall be reinstated.

History: Effective August 1, 1988; amended effective January 1, 2006; April 1, 2008; January 1, 2014.
General Authority: NDCC 19-02.1-24, 23-01-03(3)
Law Implemented: NDCC 19-02.1-24

CHAPTER 33-33-06

33-33-06-18. License fees. The annual license fee paid to the department by proprietors of bed and breakfast facilities is ~~thirty-five~~ fifty dollars. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed on or before February first following the expiration date.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-09.1-02

CHAPTER 33-33-07

33-33-07-01. Beverage license fees. Before any beverage bottler, manufacturer, processor, importer, jobber, or other retailer sells or distributes any nonalcoholic beverage in North Dakota, that beverage must be licensed by the department. The license fees for beverages are as follows:

1. Soda water, ginger ale, root beer, and pop, each brand or class, ~~sixty-five~~ eighty dollars.

2. Concentrated extracts, fountain syrups, and beverage bases, each brand, ~~sixty-five~~ eighty dollars.

3. True fruit juices and imitation or compound fruit beverages, each brand, ~~sixty-five~~ eighty dollars. Mineral and spring water, and potable water sold by a private individual, firm, corporation, or limited liability company for household or culinary purposes, each brand, ~~sixty-five~~ eighty dollars.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-01-03

CHAPTER 33-33-08

33-33-08-01. Food establishment license fees. The following annual license fees must be paid by the proprietors of food establishments, assisted living facilities, schools, or child care centers:

1. For a restaurant with general food service, ~~ninety~~ one hundred ten dollars plus fifty cents per seat, with a maximum license fee of ~~one~~ two hundred ~~eighty~~ ten dollars.

2. For a limited restaurant, ~~ninety~~ one hundred ten dollars.

3. For a retail food store, retail meat market, or bakery with not more than two thousand five hundred square feet [232.26 square meters], ~~ninety~~ one hundred ten dollars.

4. For a retail food store, retail meat market, or bakery with two thousand five hundred to five thousand square feet [232.26 to 464.52 square meters], one hundred twenty dollars.

5. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], one hundred ~~fifteen~~ forty dollars.

6. For a bar or tavern dispensing beer, liquor, or other alcoholic beverages, ~~sixty-five~~ eighty dollars.

7. For a mobile food unit or temporary food stand, ~~eighty-five~~ one hundred ten dollars.

8. For a food processing facility, ~~forty-five~~ sixty dollars.

9. For an assisted living facility, one hundred twenty dollars.

10. For a school, one hundred ~~fifteen~~ forty dollars.

11. For a child care facility, ~~thirty-five~~ fifty dollars.

If a business operates more than one type of food establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed one hundred ~~twenty-five~~ fifty dollars for those establishments with not more than two thousand five hundred square feet [232.26 square meters], ~~one~~ two hundred ~~seventy~~ ten dollars for those establishments with two thousand five hundred square feet [232.26 square meters] to not more than five thousand square feet [464.52 square meters], and two

hundred ~~forty~~ ninety dollars for those establishments over five thousand square feet [464.52 square meters].

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-01-03

CHAPTER 33-39-02

33-39-02-01. License fees. The following annual license fees must be paid by proprietors of lodging establishments:

1. For a lodging establishment containing not more than three sleeping rooms, ~~forty~~ fifty dollars.

2. For a lodging establishment containing at least four sleeping rooms but not more than ten sleeping rooms, ~~fifty-five~~ seventy dollars.

3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, ~~eighty~~ one hundred dollars.

4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, one hundred twenty dollars.

5. For a lodging establishment containing ~~fifty-one~~ more than fifty sleeping rooms and not more than one hundred sleeping rooms ~~or more~~, one hundred ~~twenty-five~~ fifty dollars.

6. For a lodging establishment containing more than one hundred sleeping rooms and not more than two hundred fifty sleeping rooms, two hundred twenty-five dollars.

7. For a lodging establishment containing more than two hundred fifty sleeping rooms and not more than five hundred sleeping rooms, three hundred twenty-five dollars.

8. For a lodging establishment containing more than five hundred sleeping rooms and not more than one thousand sleeping rooms, four hundred fifty dollars.

9. For a lodging establishment containing more than one thousand sleeping rooms, six hundred dollars.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-09-02

CHAPTER 33-41-01

33-41-01-10. License requirements.

1. No person, firm, partnership, joint venture, association, business trust, corporation, or organized group of persons may operate a body art establishment except with a body art establishment license from the department.

2. It is prohibited to obtain or attempt to obtain any body art establishment or operator permit by means of fraud, misrepresentation, or concealment.

3. A license for a body art establishment shall not be transferable from one place or person to another.

4. The current body art establishment license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.

5. The annual license fee for all types of body art establishments is one hundred ~~ten~~ thirty-five dollars.

History: Effective January 1, 2008; amended effective January 1, 2014.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

CHAPTER 33-42-01

33-42-01-10. Permits - Licenses. A person may not operate a tanning facility without a license issued by the department. The department will conduct a preoperational inspection prior to initial licensure or changes in ownership to insure operator compliance and understanding of all laws and regulations. License renewals must be submitted to the department during December every year. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date. A reduced license fee in the amount of one-half of the applicable license fee must be charged for a new facility that begins operation after July first of each year. Licenses are not transferable. The annual license fee for a tanning facility ~~is ninety dollars for facilities with up to ten tanning beds~~ containing one to five tanning beds is seventy-five dollars plus ten dollars per bed and one hundred ~~ten~~ fifty dollars for facilities with more than ~~ten~~ five beds.

History: Effective January 1, 2008; amended effective January 1, 2014.
General Authority: NDCC 23-39-07
Law Implemented: NDCC 23-39-07

TITLE 45

INSURANCE COMMISSIONER

JANUARY 2014

CHAPTER 45-12-01

45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a change in an item described on an original manufacturer's data report which affects the pressure retaining capability of the pressure retaining item. An alteration includes nonphysical changes such as an increase in the maximum allowable internal or external working pressure, an increase in design temperature, or a reduction in minimum temperature. For boilers used in the power generation industry exceeding one hundred thousand pounds of steam per hour output, increases in steaming capacity shall not be considered an alteration if a new baseline steaming capacity is established based on either an engineering evaluation or a review of the operating history and a conditional assessment of the boiler and its components. An engineering evaluation or conditional assessment must be made by the boiler owner with review and comment by the authorized inspection agency responsible for the in-service inspection of the boiler. Engineering evaluations and conditional assessments are subject to the review and approval of the chief boiler inspector.

2. "Apartments" means all multiple dwellings, including condominiums.

3. "Approved" means approved by the commissioner.

4. "A.S.M.E. code" means the boiler and pressure vessel construction code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, 2 and 3), IX, and X, ~~2010~~ 2013 edition ~~and section VIII, (division 2), 2004 edition~~, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American society of mechanical engineers code is on file at the office of the boiler inspection program. The American society of mechanical engineers code may be obtained from the American society of mechanical engineers headquarters at ~~3~~ 2 park avenue, New York, New York 10016-5990 or from www.asme.org.

5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.

6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.

7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.

8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.

9. "Commissioner" means the insurance commissioner of North Dakota.

10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.

11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.

12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.

13. "External inspection" means an inspection made when a boiler is in operation.

14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.

15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.

16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.

17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.

18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.

19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.

20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the national board inspection code.

21. "Miniature boiler" means any boiler that does not exceed any of the following limits:

    a. Sixteen-inch [40.64-centimeter] inside diameter of shell.

    b. Twenty square feet [1.86 square meter] heating surface.

    c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.

    d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.

22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American society of mechanical engineers code.

23. "National board inspection code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The national board inspection code, ~~2011~~ 2013 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.

24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.

25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.

26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.

27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.

28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by an accredited national board owner/user inspection organization.

29. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.

30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.

31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.

32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.

33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.

34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in

excess of two hundred thousand British thermal units [2.11 x 10 to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].

35. "Special inspector" means an inspector regularly employed by an accredited national board authorized inspection agency or an inspector who has passed the national board examination and is employed by an accredited national board owner/user inspection organization.

36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.

37. "State of North Dakota boiler construction code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American society of mechanical engineers code.

38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

History: Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-02

45-12-02-18. Reports of welded repair or alterations. All alterations and major repairs made to boilers in North Dakota must be reported on the appropriate national board form. The completed form must be sent to the chief boiler inspector by the repair concern effecting the repair or alteration within thirty days of the completion of the repair or alteration.

Subject to the administrative procedures of the boiler inspection program and the approval of the inspector, repairs of a routine nature may be given prior approval ~~or~~ and the requirement for the repair ~~report~~ stamping may be waived. The National Board Inspection Code must be used as a guideline in determining repairs of a routine nature.

History: Effective June 1, 1994; amended effective October 1, 2002; January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-03
GENERAL REQUIREMENTS

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45-12-03-26	Inspection of Boilers
45-12-03-27	Steam Traction Engines
45-12-03-28	Safety Valves

45-12-03-23. Shop inspection - Manufacturing - Repairs - Alterations. Any ~~new~~ boiler or pressure vessel being constructed, repaired, or altered in North Dakota must be ~~shop-inspected~~ inspected by an inspector holding a North Dakota reciprocal commission and a national board commission. The boiler inspection program may function as an authorized inspection agency. The boiler inspection program may cooperate with the national board and American society of mechanical engineers in making shop reviews and audits.

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-05
POWER BOILERS - EXISTING INSTALLATIONS

Section	
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45-12-05-08	Safety Valves and Safety Relief Valves
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45-12-05-21	Steam Pressure Gauge
45-12-05-22	Pressure on Nonstandard Steam Traction Engines
45-12-05-23	Duties of Owners
45-12-05-24	Inspection and Repair of Standard and Nonstandard Steam Traction Engines.

45-12-05-02. Maximum allowable working pressure for nonstandard boilers.

1. The maximum allowable working pressure on the shell of a nonstandard boiler must be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this article.

$\frac{TStE}{RFS}$ = Maximum allowable working pressure, per square inch gauge where:

TS = Ultimate tensile strength of shell plates per square inch

t = Minimum thickness of shell plate, in weakest course, inches

E = Efficiency of longitudinal joint:

For tube ligaments and riveted construction, E shall be determined by the rules given in section I, part PR, of the American Society of Mechanical Engineers Code for power boilers. For seamless construction, E shall be considered one hundred percent.

R = Inside radius of the weakest course of the shell, in inches

FS = Factor of safety permitted

2. When the tensile strength of steel or wrought iron shell plate is not known, it must be taken as fifty-five thousand pounds per square inch [386.11 megapascals] for steel and forty-five thousand pounds per square inch [310.26 megapascals] for wrought iron.

3. The resistance to crushing of mild steel must be taken at ninety-five thousand pounds per square inch [655 megapascals] of the cross-sectional area.

4. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch [megapascals] of the cross-sectional area of the rivet shank must be used:

	POUNDS PER SQUARE INCH	MEGAPASCALS
Iron rivets in single shear	38,000	262.00
Iron rivets in double shear	76,000	524.00
Steel rivets in single shear	44,000	303.37
Steel rivets in double shear	88,000	606.69

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from the following table, or as ascertained by cutting out one rivet in the body of the joint.

SIZES OF RIVETS BASED ON PLATE THICKNESS

Thickness of plate, inches	1/4	9/32	5/16	11/32	3/8	13/32
Diameter of rivet after driving, inches	11/16	11/16	3/4	3/4	13/16	13/16
Thickness of plate, inches	7/16	15/32	1/2	9/16	5/8	
Diameter of rivet after driving, inches	15/16	15/16	15/16	1-1/16	1-1/16	

5. The following factors of safety must be increased by the inspector if the condition and safety of the boiler demand it:

   The lowest factor of safety permissible on existing installations is four ~~and five-tenths~~, except for horizontal-return-tubular boilers having continuous longitudinal lap seams more than twelve feet [3.66 meters] in length, when the factor of safety is eight; when this latter type boiler is removed from its existing setting, it may not be reinstalled for pressures in excess of fifteen pounds per square inch gauge [103 kilopascals].

   Reinstalled or secondhand boilers must have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-and-double-strap construction. Steam traction engines must be considered as secondhand boilers for purposes of determining their factors of safety.

History: Effective June 1, 1994; amended effective July 1, 2012; January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-08. Safety valves and safety relief valves. Safety valves and safety relief valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

~~1. Each boiler must have at least one American society of mechanical engineers approved safety valve and if it has more than five hundred square feet [46.45 square meters] of water heating surface, or if an electric boiler it has a power input of more than eleven hundred kilowatts, it must have two or more American society of mechanical engineers approved safety valves.~~

~~2. The safety valve capacity for each boiler must be such that the safety valve, or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than six percent above the highest pressure at which any valve is set and in no case to more than six percent above the maximum allowable working pressure. The safety valve capacity of new units may not be less than the maximum designed steaming capacity as determined by the manufacturer.~~

~~3. The required steam relieving capacity in pounds per hour, of the safety relief valves on a high temperature water boiler must be determined by dividing the maximum output in British thermal units at the boiler nozzle obtained by the firing of any fuel for which the unit is designed by one thousand (one British thermal unit equals 1.055 x 10 to the 3rd power joules).~~

4. ~~One or more safety valves on the boiler proper must be set at or below the maximum allowable working pressure. If additional valves are used, the highest pressure setting may not exceed the maximum allowable working pressure by more than three percent. The complete range of pressure settings of all the saturated steam safety valves on a boiler may not exceed ten percent of the highest pressure to which any valve is set. Pressure setting of safety relief valves on high temperature water boilers may exceed this ten percent range.~~

5. ~~For a forced-flow steam generator with no fixed steamline and waterline, equipped with automatic controls and protective interlocks responsive to steam pressure, safety valves may be installed in accordance with the following, as an alternative:~~

   a. ~~One or more power-actuated pressure-relieving valves must be provided in direct communication with the boiler when the boiler is under pressure and must receive a control impulse to open when the maximum allowable working pressure at the superheater outlet is exceeded. The total combined relieving capacity of the power-actuated pressure-relieving valves may be not less than ten percent of the maximum design steaming capacity of the boiler under any operating condition as determined by the manufacturer. The valves must be located in the pressure part system where they will relieve the overpressure.~~

      ~~An isolating stop valve of the outside-screw-and-yoke type may be installed between the power-actuated pressure-relieving valve and the boiler to permit repairs provided an alternate power-actuated pressure-relieving valve of the same capacity is so installed as to be in direct communication with the boiler.~~

   b. ~~Spring-loaded safety valves must be provided having a total combined relieving capacity, including that of the power-actuated pressure-relieving valve installed under subdivision a of subsection 5, of not less than one hundred percent of the maximum designed steaming capacity of the boiler, as determined by the manufacturer. In this total credit in excess of thirty percent of the total relieving capacity may not be allowed for the power-actuated pressure-relieving valves actually installed. Any or all of the spring-loaded safety valves may be set above the maximum allowable working pressure of the parts to which they are connected but the set pressures must be such that when all these valves (together with the power-actuated pressure-relieving valves) are in operation the pressure will not rise more than twenty percent above the maximum allowable working pressure of any part of the boiler, except for the steampiping between the boiler and the prime mover.~~

~~c. When stop valves are installed in the water-steam flow path between any two sections of a forced-flow steam generator with no fixed steamline and waterline:~~

~~(1) The power-actuated pressure-relieving valve required by subdivision a of subsection 5 must also receive a control impulse to open when the maximum allowable working pressure of the component, having the lowest pressure level upstream to the stop valve, is exceeded.~~

~~(2) The spring-loaded safety valve must be located to provide the pressure protection requirements of subdivision b or c of subsection 5.~~

~~(3) A reliable pressure-recording device must always be in service and records kept to provide evidence of conformity to the above requirements.~~

~~6. All safety valves or safety relief valves must be so constructed that the failure of any part cannot obstruct the free and full discharge of steam and water from the valve. Safety valves must be of the direct spring-loaded pop type, with seat inclined at any angle between forty-five and ninety degrees, inclusive, to the centerline of the spindle. The coefficient of discharge of safety valves must be determined by actual steam-flow measurements at a pressure not more than three percent above the pressure at which the valve is set to blow.~~

~~7. Safety valves or safety relief valves may be used which give any opening up to the full discharge capacity of the area of the opening of the inlet of the valve, provided the movement of the valve is such as not to induce lifting of water in the boiler.~~

~~8. Deadweight or weighted-lever safety valves or safety relief valves may not be used.~~

~~9. For high temperature water boilers safety relief valves must be used. Such valves must have a closed bonnet. For purposes of selection, the capacity rating of such safety relief valves must be expressed in terms of actual steam flow determined on the same basis as for safety valves. In addition, the safety relief valves must be capable of satisfactory operation when relieving water at the saturation temperature corresponding to the pressure at which the valve is set to blow.~~

~~10. A safety valve or safety relief valve over three inches [76.20 millimeters] in size, used for pressure greater than fifteen pounds per square inch gauge [103 kilopascals], must have a flange inlet connection or a welding-end inlet connection. The dimensions of flanges subjected~~

~~to boiler pressure must conform to the applicable American national standards.~~

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-09. Superheater safety valve requirements. Superheater safety valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code section referenced in this article or the requirements of the edition of the American Society of Mechanical Engineers Code section to which the superheater they are installed was constructed.

~~1. Every attached superheater must have one or more safety valves near the outlet. If the superheater outlet header has a full, free, steam passage from end to end and is so constructed that steam is supplied to it at practically equal intervals throughout its length so that there is a uniform flow of steam through the superheater tubes and the header, the safety valve or valves may be located anywhere in the length of the header.~~

~~2. The discharge capacity of the safety valve or valves on an attached superheater may be included in determining the number and size of the safety valves for the boiler provided there are no intervening valves between the superheater safety valve and the boiler, and provided the discharge capacity of the safety valve or valves, on the boiler, as distinct from the superheater, is at least seventy-five percent of the aggregate valve capacity required.~~

~~3. Every independently fired superheater that may be shut off from the boiler and permit the superheater to become a fired pressure vessel must have one or more safety valves having a discharge capacity equal to six pounds of steam per square foot [2.72 kilograms per square meter] of superheater surface measured on the side exposed to the hot gases. The number of safety valves installed must be such that the total capacity is at least equal to that required.~~

~~4. Every reheater must have one or more safety valves, such that the total relieving capacity is at least equal to the maximum steam flow for which the reheater is designed. At least one valve must be located on the reheater outlet. The relieving capacity of the valve on the reheater outlet may not be less than fifteen percent of the required total. The capacity of reheater safety valves may not be included in the required relieving capacity for the boiler and superheater.~~

~~5. A soot-blower connection may be attached to the same outlet from the superheater or reheater that is used for the safety valve connection.~~

6. ~~Every safety valve used on a superheater or reheater discharging superheated steam at a temperature over four hundred fifty degrees Fahrenheit [232.2 degrees Celsius], must have a casing, including the base, body, bonnet, and spindle. Construction must be of steel, steel alloy, or equivalent heat-resistant material.~~

   ~~The valve must have a flanged inlet connection or a welding-end inlet connection. It must have the seat and disk of suitable heat-erosive and corrosive-resistant material, and the spring fully exposed outside of the valve casing so that it is protected from contact with the escaping steam.~~

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-10. Capacity. The minimum safety valve or safety relief valve relieving capacity for all high-pressure boilers other than steam traction engines must be determined by the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or by the requirements of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

The minimum safety valve relieving capacity for steam traction engines must be determined using the edition of the National Board Inspection Code referenced in this article.

1. ~~The minimum safety valve or safety relief valve relieving capacity for other than electric boilers, and forced-flow steam generators with no fixed steamline and waterline, must be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface and waterwall heating surface, as given in the following table:~~

~~MINIMUM POUNDS OF STEAM~~
~~PER HOUR PER SQUARE FOOT OF SURFACE~~

	~~Firetube~~ Boilers	~~Watertube~~ Boilers
~~Boiler heating surface~~		
~~Hand-fired~~	~~5~~	~~6~~
~~Stoker-fired~~	~~7~~	~~8~~
~~Oil-, gas-, or pulverized-fuel-fired~~	~~8~~	~~10~~
~~Waterwall heating surface~~		
~~Hand-fired~~	~~8~~	~~8~~

~~Stoker-fired~~	~~8~~	~~8~~
~~Oil-, gas-, or pulverized-fuel-fired~~	~~14~~	~~16~~

~~When a boiler is fired only by a gas having a heat value not in excess of two hundred British thermal units [745.58 x 10 to the 4th power joules] per cubic foot [cubic meter], the minimum safety valve or safety relief valve relieving capacity may be based on the values given for hand-fired boilers above.~~

~~The minimum safety valve or safety relief valve relieving capacity for electric boilers is three and one-half pounds [3692.5 joules] per hour per kilowatt input.~~

~~In any cases a greater relieving capacity of safety valves or safety relief valves will have to be provided than the minimum specified by this rule, and in every case the requirements of section 45-12-05-08 must be met.~~

~~2.~~ ~~The heating surface must be computed for that side of the boiler surface exposed to the products of combustion, exclusive of the superheating surface. In computing the heating surface for this purpose, only the tubes, fireboxes, shells, tube sheets, and the projected area of headers need be considered, except that for vertical firetube steam boilers, only that portion of the tube surface up to the middle gauge cock is to be computed. The minimum number and size of safety valves or safety relief valves required must be determined on the basis of the aggregate relieving capacity and the relieving capacity marked on the valves by the manufacturer. If the operating conditions are changed, or additional heating surface such as water screens or waterwalls is connected to the boiler circulation, the safety valve or safety relief valve capacity must be increased, if necessary, to meet the new conditions and be in accordance with subsection 2 of section 45-12-05-08. The additional valves required on account of changed conditions may be installed on the steamline or waterline between the boiler and the main stop valve except when the boiler is equipped with a superheater or other apparatus, in which case they may be installed on the steam pipes between the boiler drum and the inlet to the superheater or other apparatus, provided that the steam main between the boiler and points where a safety valve or valves may be attached has a cross-sectional area at least three times the combined areas of the inlet connections to the safety valves applied to it.~~

~~3.~~ ~~If the safety valve or safety relief valve capacity cannot be computed or if it is desirable to prove the computations, it may be checked in any one of the three following ways, and if found insufficient, additional capacity must be provided:~~

~~a.~~ ~~By making an accumulation test, that is, by shutting off all other steam-discharge outlets from the boiler and forcing the fires to~~

~~the maximum. The safety valve equipment must be sufficient to prevent an excess pressure beyond that specified in subsection 2 of section 45-12-05-08. This method should not be used on a boiler with a superheater or reheater or on a high temperature water boiler.~~

~~b. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity upon the basis of the heating value of the fuel.~~

~~c. By determining the maximum evaporative capacity by measuring the feedwater. The sum of the safety valve capacities marked on the valves must be equal to or greater than the maximum evaporative capacity of the boiler. This method may not be used on high temperature water boilers.~~

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-11. Mounting. The mounting of safety valves and safety relief valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or by the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

~~1. When two or more safety valves are used on a boiler, they may be mounted either separately or as twin valves made by placing individual valves on Y-bases, or duplex valves having two valves in the same body casing. Twin valves made by placing individual valves on Y-bases or duplex valves having two valves in the same body must be of equal size.~~

~~When not more than two valves of different sizes are mounted singly the relieving capacity of the smaller valve may not be less than fifty percent of that of the larger valve.~~

~~2. The safety valve or safety relief valve or valves must be connected to the boiler independent of any other connection, and attached as close as possible to the boiler without any unnecessary intervening pipe or fitting. Such intervening pipe or fitting may not be longer than the face-to-face dimension of the corresponding tee fitting of the same diameter and pressure under the applicable American national standard rating. Every safety valve or safety relief valve must be connected so as to stand in an upright position with spindle vertical.~~

~~3. The opening or connection between the boiler and the safety valve or safety relief valve must have at least the area of the valve inlet. No valve of any description may be placed between the required safety valve or~~

~~valves and the boiler nor on the discharge pipe between the safety valve or safety relief valve and the atmosphere. When a discharge pipe is used, the cross-sectional area may not be less than the full area of the valve outlet or of the total of the areas of the valve outlets, discharging thereinto and must be as short and straight as possible and arranged to avoid undue stresses on the valve or valves.~~

~~All safety valve or safety relief valve discharges must be so located or piped as to be carried clear from running boards or platforms. Ample provision for gravity drain must be made in the discharge pipe at or near each safety valve or safety relief valve, and where water or condensation may collect. Each valve must have an open gravity drain through the casing below the level of the valve seat. For iron-and-steel-bodied valves exceeding two inches [50.8 millimeters] in size, the drain hole must be tapped not less than three-eighths-inch [9.53-millimeter] pipe size.~~

~~Discharge piping from safety relief valves on high temperature water boilers must have adequate provisions for water drainage as well as for steam venting.~~

~~The installation of cast iron-bodied safety relief valves for high temperature water boilers is prohibited.~~

~~4.~~ ~~If a muffler is used on a safety valve or safety relief valve, it must have sufficient outlet area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve. The muffler plates or other devices must be so constructed as to avoid a possibility of restriction of the steam passages due to deposits. Mufflers may not be used on high temperature water boiler safety relief valves.~~

~~When a safety valve or safety relief valve is exposed to outdoor elements which may affect operation of the valve, it is permissible to shield the valve with a satisfactory cover. The shield or cover must be property vented and arranged to permit servicing and normal operation of the valve.~~

~~5.~~ ~~When a boiler is fitted with two or more safety valves or safety relief valves on one connection, this connection to the boiler must have a cross-sectional area not less than the combined areas of inlet connections of all the safety valves or safety relief valves with which it connects.~~

~~6.~~ ~~Safety valves may be attached to drums or headers by welding, provided the welding is done in accordance with the requirements of this article.~~

~~7.~~ ~~Every boiler must have proper outlet connections for the required safety valve, or safety relief valve, or valves, independent of any other~~

~~outside steam connection, the area of opening to be at least equal to the aggregate areas of inlet connections of all of the attached safety valves or safety relief valves. An internal collecting pipe, splash plate, or pan may be used, provided the total area for inlet of steam thereto is not less than twice the aggregate areas of the inlet connections of the attached safety valves. The holes in such collecting pipe must be at least one-fourth inch [6.35 millimeters] in diameter and the least dimension in any other form of opening for inlet of steam must be one-fourth inch [6.35 millimeters].~~

~~Such dimensional limitations to operation for steam need not apply to steam scrubbers or driers provided the net free steam inlet area of the scrubber or drier is at least ten times the total area of the boiler outlets for the safety valves.~~

~~8. If safety valves are attached to a separate steam drum or dome, the opening between the boiler proper and the steam drum or dome must be not less than required by above.~~

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-12. Operation. The operation of safety valves and safety relief valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or by the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

If the operating conditions of a valve are changed so as to require a new spring for a different pressure, the valve must be adjusted by the manufacturer, the manufacturer's authorized representative, or by a holder of a valid national board "VR" certificate who shall furnish and install a new nameplate.

~~1. Safety valves must be designed and constructed to operate without chattering and to attain full lift at a pressure no greater than three percent above their set pressure. After blowing down, all valves must close at a pressure not lower than ninety-six percent of the set pressure of the lowest set valve. The minimum blowdown in any case is two pounds per square inch [13.79 kilopascals]. For spring-loaded pop safety valves for pressures between one hundred pounds per square inch [689.48 kilopascals] and three hundred pounds per square inch [2068.44 kilopascals], both inclusive, the blowdown is not less than two percent of the set pressure. To ensure the guaranteed capacity and satisfactory operation, the blowdown as marked upon the valve may not be reduced.~~

~~Safety valves used on forced-flow steam generators with no fixed steamline and waterline, and safety relief valves, used on high~~

~~temperature water boilers, may be set and adjusted to close after blowing down not more than ten percent of the set pressure. The valves for these special uses must be so adjusted and marked by the manufacturer.~~

~~2. The blowdown adjustment must be made and sealed by the manufacturer or approved testing facility.~~

~~3. The popping-point tolerance plus or minus may not exceed the following: two pounds per square inch [13.79 kilopascals] for pressures up to and including seventy pounds per square inch [482.63 kilopascals], three percent for pressures from seventy-one pounds per square inch [483.0 kilopascals] to three hundred pounds per square inch [2068.44 kilopascals], ten pounds per square inch [68.95 kilopascals] for pressures from three hundred one pounds per square inch [2069.0 kilopascals] to one thousand pounds per square inch [6894.80 kilopascals], and one percent for pressures over one thousand pounds per square inch [6894.80 kilopascals].~~

~~4. To ensure the valve being free, each safety valve or safety relief valve must have a substantial lifting device by which the valve disk may be positively lifted from its seat when there is at least seventy-five percent of full working pressure on the boiler. The lifting device must be such that it cannot lock or hold the valve disk in lifted position when the exterior lifting force is released.~~

~~Safety relief valve disks used on high temperature water boilers may not be lifted while the temperature of the water exceeds two hundred degrees Fahrenheit [93.3 Celsius]. If it is desired to lift the valve disk to assure that it is free, this shall be done when there is at least seventy-five percent of full working pressure on the boiler. For high temperature water boilers, the lifting mechanism must be sealed against leakage.~~

~~5. The seats and disks of safety valves or safety relief valves must be of suitable material to resist corrosion. The seat of a safety valve must be fastened to the body of the valve so that there is no possibility of the seat lifting.~~

~~6. Springs used in safety valves may not show a permanent set exceeding one percent of their free length ten minutes after being released from a cold compression test closing the spring solid.~~

~~7. The spring in a safety valve or safety relief valve in service for pressures up to and including two hundred fifty pounds per square inch [1683.7 kilopascals] may not be used for any pressure more than ten percent above or ten percent below that for which the safety valve or safety relief valve is marked. For higher pressures the spring may not be reset for any pressure more than five percent above or five percent below that for which the safety valve or safety relief valve is marked.~~

~~8. If the operating conditions of a valve are changed so as to require a new spring under subsection 1 for a different pressure, the valve must be adjusted by the manufacturer, the manufacturer's authorized representative, or by a holder of a valid national board "VR" certificate who shall furnish and install a new nameplate.~~

History: Effective June 1, 1994; amended effective July 1, 2012; January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-22. Pressure on nonstandard steam traction engines. All steam traction engines that are of nonstandard boiler construction are limited to a maximum allowable working pressure of one hundred pounds per square inch [690 kilopascals], unless a thorough ultrasonic thickness survey, engineering analysis, and other inspections, approved by the chief boiler inspector, determine that a different pressure is appropriate. The maximum allowable working pressure may not be greater than that permitted by the original manufacturer. Boilers herein described are not subject to the age limits of section 45-12-05-03.

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-05-24. Inspection and repair of standard and nonstandard steam traction engines. The National Board Inspection Code referenced in this article must be used for the inspection and repair of all steam traction engines unless otherwise noted in this article.

History: Effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-09

45-12-09-06. General. If in the judgment of the inspector, a ~~steam heating~~ boiler is unsafe for operation at the pressure previously approved, the pressure must be reduced, proper repair made, or the boiler retired from service.

History: Effective June 1, 1994; amended effective January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

45-12-09-11. Feedwater connections.

1. Feedwater connections must be independent of any water gauge connections and be made to the condensate return pipe or reservoir of the condensate return tank.

2. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent connection may not discharge directly against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment may not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, blowoff, water column, water gauge glass, pressure gauge, or temperature gauge.

3. When there is more than one boiler connected to a system, each boiler must have an independent feedwater line.

4. There must be a stop valve and a check valve in the feedwater line at the boiler. For hot water heating boilers, the check valve must be a backflow preventer approved by the ~~State Plumbing Code, 2009 edition~~ state plumbing board.

5. Hot water heating boilers, not equipped with an approved low-water fuel cutoff, must be equipped with an automatic feeding device or pressure reducing valve method of feeding, in addition to a manual bypass capable of feeding the boiler at a pressure of six percent above safety relief valve setting.

History: Effective June 1, 1994; amended effective January 1, 2000; October 1, 2002; July 1, 2012; January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-10

45-12-10-01. Construction and installation standards - Exceptions. Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, ~~2010~~ 2013 edition ~~or section VIII, division 2, 2004 edition~~, and bear the "U" stamp as proof of such construction.

Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.

The requirements of this section apply to all pressure vessels within the scope of the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, ~~2010~~ 2013 edition ~~or section VIII, division 2, 2004 edition~~, with these exceptions:

1. Pressure vessels under federal control.

2. Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.

3. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.

4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines. Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American society of mechanical engineers boiler and pressure vessel code, ~~2010~~ 2013 edition. Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

History: Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; April 1, 2010; July 1, 2012; January 1, 2014.
General Authority: NDCC 26.1-22.1-14
Law Implemented: NDCC 26.1-22.1-14

TITLE 62

STATE BOARD OF PLUMBING

JANUARY 2014

CHAPTER 62-03.1-02

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

1. **Administration.** Add to 101.5.6 the words "or within" after the word "into". The following subsections do not apply: 103.1 through 103.4; 103.5.1.2, 103.5.3.1, 103.5.6, and table 1-1.

2. **Definitions.** Add to 211.0: "Inspection report" means a notice, written by a plumbing inspector to the person responsible for the plumbing installation, describing work inspected and stating violations and noncompliance of rules and regulations as listed, which must be corrected within a designated time.

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

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

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

3. **General regulations.** Add to 313.2: When a water heater is located in an attic, attic-ceiling assembly, floor-ceiling assembly, or floor-subfloor assembly where damage results from a leaking water heater, a

watertight pan of corrosion-resistant materials shall be installed beneath the water heater with not less than three-quarters of an inch [19.05 millimeters] diameter drain to an approved location. Add to 313.6: Water service piping must be installed with a minimum earth cover of seven feet [2.13 meters]. Minimum earth cover for building sewers must be four feet [1.22 meters].

Subsection 313.12.4 does not apply.

4. **Plumbing fixtures and fixture fittings.** Add to 402.4: Mixing-type hand-closing faucets may be installed on lavatories for public use. Lavatories must have waste outlets not less than one and one-fourth inches [31.75 millimeters] in diameter, with open strainers.

   Add to 405.2: Urinals with nonintegral traps shall be prohibited.

   Add to 408.1: Water closets in private rooms of hotels, motels, dormitories, and boarding houses must be of the elongated bowl type.

   Delete table 4-1 from 412.1 and add table 2902.1 of the most recently state-adopted International Building Code, with the following modifications: References on table 2902.1 to sections of the International Building Code and International Plumbing Code do not apply.

   Add to Note a: Types of occupancies not shown on this table shall be considered individually by the administrative authority. The occupant load shall be composed of fifty percent of each sex.

   Add the following notes:

   Drinking fountains. There shall be a minimum of one drinking fountain per occupied floor in schools, theaters, auditoriums, dormitories, and businesses. Where food is consumed indoors, water stations may be substituted for drinking fountains. Where bottled water coolers are provided, drinking fountains shall not be required. Drinking fountains shall not be required in occupancies with less than thirty persons. Drinking fountains shall not be installed in toilet rooms.

   Urinals. The provision of urinals may offset water closets otherwise required but the number of water closets required may not be reduced in this manner by more than fifty percent. Walls and floors within two feet [609.6 millimeters] of the sides and front of urinals must be finished with a smooth, hard, nonabsorbent finish.

   Lavatories. Where circular or similar handwashing appliances are provided, twenty-four lineal inches [609.6 millimeters] of wash sink or eighteen inches [457.2 millimeters] of a circular basin, when provided

with water outlets for such space, shall be considered equivalent to one lavatory.

Restaurant. For the purpose of this table, a restaurant is defined as a business that sells food to be consumed on premises. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls. A hand sink is required to be available to employees in a restaurant or other food preparation occupancy.

Subsection 414.5 does not apply.

5. **Water heaters.** Does not apply.

6. **Water supply and distribution.** Add to 602.4. Every building intended for human habitation, occupancy, or use, and located on premises where public water is available, must be connected to such public water. Public water is considered available if located within two hundred feet [60.96 meters] from any proposed building required to have potable water located on any lot or premises which abuts and is served by public water.

   Delete from 604.2 exception: or underground outside of structures.

   Delete from 604.8 exception: Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate aboveground at each end of the nonmetallic piping. The tracer wire size shall be not less than eighteen AWG and the insulation type shall be suitable for direct burial.

   <u>Add to 604.10: new heading "Lead Content"; also add additional sentences to the end of the paragraph: Effective January 4, 2014, the maximum allowable lead content shall not exceed a weighted average of twenty-five hundredths percent with respect to wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures used to convey or dispense water for human consumption.</u>

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

   Add to 605.3: Wall hydrants must be separately controlled by an accessible valve inside the building.

7. **Sanitary drainage.** Add to 705.1.6. For aboveground installations an approved shielded coupling must be used to prevent outward expansion.

Delete from 712.1: Except that plastic pipe shall not be tested with air. Add to table 7-1, under reference standards column for PVC, SDR 35 ASTM 3034 or heavier. Note 1.

Delete from 723.0: Plastic drainage waste and vent (DWV) piping systems shall not be tested by the air test method.

8. **Indirect wastes.** Add to 807.4 or the discharge line from the dishwasher may be looped up and securely fastened to the underside of the counter.

9. **Vents.** Subsections 908.2.1, 908.2.2, and 908.2.3 do not apply: Replace 908.2.1 with an individually vented lavatory in a single bathroom or single toilet room shall be permitted to serve as the wet vent for one water closet and one bathtub or shower stall, or one water closet and one bathtub and shower combination if all of the following conditions are met:

   a. The wet vent, and the dry vent extending from the wet vent, shall be two inches [50.8 millimeters] minimum pipe size.

   b. The wet vent pipe opening shall not be below the weir of the trap that it serves. Vent sizing, grades, and connections shall comply with sections 904.0 and 905.0.

   c. The horizontal branch drain serving both the lavatory and the bathtub or shower stall shall be two inches [50.8 millimeters] minimum pipe size.

   d. The length of the trap arm from the bathtub or shower stall complies with the limits in table 10-1.

   e. The distance from the outlet of the water closet to the connection of the wet vent complies with the limits in table 10-1.

   f. The horizontal branch drain serving the lavatory and the bathtub or shower stall shall connect to the horizontal water closet branch above its centerline. When the bathroom or toilet room is the topmost load on a stack, the horizontal branch serving the lavatory and the bathtub or shower stall shall be permitted to connect to the stack below the water closet branch.

   g. No fixture other than those listed in L 6.2.1 shall discharge through a single bathroom or single toilet room wet-vented system.

   Replace 908.2.2 with: Double Bathtubs, Bathtub and Shower Combinations, Shower Stalls, and Lavatories.

Two lavatories, each rated at 1.0 drainage fixture unit, and two bathtubs, bathtub and shower combinations or shower stalls, installed in adjacent bathrooms, shall be permitted to drain to a horizontal drain branch that is two inches [50.8 millimeters] minimum pipe size, with a common vent for the lavatories and no individual vents for the bathtubs, bathtub and shower combinations or shower stalls, provided that the wet vent from the lavatories and their dry vent is two inches [50.8 millimeters] minimum pipe size and the length of all trap arms comply with the limits in table 10-1.

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

Subsection 910.2 does not apply.

10. **Traps and interceptors.** No change.

11. **Storm drainage.** No change.

12. **Fuel piping.** Does not apply.

13. **Health care facilities and medical gas and vacuum systems.** Does not apply.

14. **Referenced standards.** No change.

15. **Firestop protection.** Does not apply.

16. **Nonpotable water reuse systems.** No change.

17. **Appendix E, manufactured or mobile home parks and recreational vehicle parks.** Add to E1.0 water and sewer connections under the manufactured home may be made by individuals certified by the North Dakota department of commerce in accordance with the North Dakota manufactured home installation guidelines.

    Part D does not apply.

18. **Appendix L.** Delete from L8.1 circuit venting shall be designed by a registered professional engineer as an engineered design.

History: Effective March 1, 2000; amended effective March 1, 2002; April 1, 2010; January 1, 2014.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

TITLE 75

DEPARTMENT OF HUMAN SERVICES

JANUARY 2014

CHAPTER 75-02-01.2
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

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75-02-01.2-17	Death of a Parent
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75-02-01.2-83 Job Opportunities and Basic Skills Program - Basic Requirements [Repealed]
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75-02-01.2-91 Job Opportunities and Basic Skills Program - Educational Activities Related to Secondary Education, Basic and Remedial Education, or Education in English Proficiency [Repealed]

75-02-01.2-92	Job Opportunities and Basic Skills Program - Job Skills Training Directly Related to Employment [Repealed]
75-02-01.2-93	Job Opportunities and Basic Skills Program - Unsubsidized Employment [Repealed]
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75-02-01.2-95	Job Opportunities and Basic Skills Program - Job Development and Job Placement Activities [Repealed]
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75-02-01.2-97	Job Opportunities and Basic Skills Program - Provision of Child Care Services to Another Participant Engaged in a Community Service Program [Repealed]
75-02-01.2-98	Job Opportunities and Basic Skills Program - Work Experience and Community Service Program [Repealed]
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75-02-01.2-100	Job Opportunities and Basic Skills Program - On-the-Job Training [Repealed]
75-02-01.2-101	Job Opportunities and Basic Skills Program - Subsidized Public or Private Sector Employment [Repealed]
75-02-01.2-102	Job Opportunities and Basic Skills Program - Failure or Refusal to Participate
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75-02-01.2-104	County Administration

75-02-01.2-01. Definitions. ~~For the purposes of~~ 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. "Aid to families with dependent children" 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 prior to July 1, 1997.~~

~~2.~~ 1. "Applicant" means an individual who is seeking a benefit under this chapter.

~~3.~~ 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.

~~4.~~ 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.

~~5.~~ 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.

~~6.~~ 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.

~~7.~~ 6. "Benefit month" means the calendar month immediately following the processing month.

~~8.~~ 7. "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.

~~9.~~ 8. "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.

~~10.~~ 9. "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.

~~11.~~ 10. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.

~~12. "County agency" means the county social service board.~~

~~13. "County demonstration project" means a project operated by a county, with state approval, to conduct a temporary assistance for needy families program with different objective criteria for the delivery of~~

~~benefits, services, and the determination of eligibility from those provided elsewhere in the state.~~

~~14.~~ 11. "Department" means the North Dakota department of human services.

~~15.~~ 12. "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.

~~16.~~ 13. "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.

~~17.~~ 14. "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.

~~18.~~ 15. "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.

~~19.~~ 16. "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.

~~20. "Financially responsible person" means a person legally responsible for or with a legal duty to provide for the financial support of another person.~~

~~21. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.~~

~~22.~~ 17. "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.

~~20.~~ 18. "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.

~~24.~~ 19. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.

20. "Legally responsible" means having a legal duty for the financial support of another person.

~~25.~~ 21. "~~Living~~ 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:

a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;

b. 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;

c. 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;

d. 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

e. 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.

~~26. "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.~~

~~27. "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, every other week, twice a month, monthly, intermittently, or annually, but is computed and considered monthly.~~

~~28. "Needy" means a household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the household when added to special items of need and any clothing and personal needs allowances of forty-five dollars for which the household is eligible.~~

~~29. "Nonlegally responsible relative" means a relative who is not the child's parent.~~

~~30.~~ 22. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:

a. An individual whose parental rights have been terminated with respect to that child; or

b. A stepparent.

~~31.~~ 23. "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.

~~32.~~ 24. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any benefit to be paid during the benefit month.

~~33.~~ 25. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.

~~34.~~ 26. "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 county agency'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.

~~35.~~ 27. "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.

~~36.~~ 28. "Recipient" means an individual who receives cash assistance under this chapter.

~~37.~~ 29. "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.

~~38.~~ 30. "Retrospective budgeting" means a determination, made by the county agency 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.

~~39.~~ 31. "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.

~~40. "Self-sufficient" means having income sufficient to require closure of the temporary assistance for needy families case.~~

~~41.~~ 32. "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.

~~42.~~ 33. "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.

~~43.~~ 34. "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.

~~44.~~ 35. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~45.~~ 36. "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.

~~46.~~ 37. "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.

~~47.~~ 38. "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.

~~48. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].~~

~~49. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].~~

~~50. "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].~~

~~51. "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].~~

~~52.~~ 39. "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.
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 ~~disabled~~ persons with disabilities.

2. The incapacity must ~~be such that it reduces~~ substantially reduce or ~~eliminates~~ eliminate employment in the parent's usual occupation ~~or another occupation to which a parent may be able to adapt. The fact that a parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent~~. 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 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.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-23. Exempt assets. The following assets are exempt from consideration in determining eligibility for temporary assistance for needy families benefits:

1. The home occupied by the household including trailer homes being used as living quarters, and the land upon which the home stands, up to twenty contiguous acres [8.09 hectares], if rural, and up to two acres [.81 hectare], if located within the established boundaries of a city;

2. Personal effects, wearing apparel, household goods, and furniture;

3. One car, van, or pickup of any equity value;

4. Indian trust or restricted lands, the proceeds from the sale thereof so long as those proceeds are impressed with the original trust, and the proceeds from the lease thereof so long as those proceeds are not commingled with other funds;

5. For twelve months from the month of receipt ~~and the following month~~, any refund of federal income taxes made to a member of the household ~~by reason of 25 U.S.C. 32, relating to~~ including the earned income tax credit, and any payment made to a member of the household by an employer ~~under 26 U.S.C. 3507~~, relating to advance payment of earned income tax credit;

6. Real property that the household is making a good-faith effort to sell;

7. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion;

8. The equity value of all assets owned by a member of the household who is a recipient of supplemental security income; and

9. The equity value of the assets, jointly owned by a program household member and a recipient of supplemental security income.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-34. Good cause for failure or refusal to cooperate in obtaining support or establishing paternity.

1. The county agency, for good cause, may waive the requirement that an individual cooperate in obtaining support and establishing paternity if it determines that cooperation is against the best interests of the child. A county agency may determine that required cooperation is against the best interests of the child only if:

   a. The individual's cooperation in establishing paternity or securing child support is reasonably anticipated to result in:

      (1) Physical harm to the child for whom support is to be sought;

      (2) Emotional harm to the child for whom support is to be sought;

      (3) Physical harm to the parent or caretaker relative with whom the child is living which reduces that individual's capacity to care for the child adequately; or

      (4) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces that individual's capacity to care for the child adequately; or

   b. At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure

child support would be detrimental to the child for whom support would be sought:

(1) The child for whom support is sought was conceived as a result of incest or forcible rape;

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) The individual, otherwise required to cooperate, is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.

2. Physical harm and emotional harm must be of a serious nature in order to justify a waiver.

3. A waiver due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency shall consider:

   a. The present emotional state of the individual subject to emotional harm;

   b. The emotional health history of the individual subject to emotional harm;

   c. Intensity and probable duration of the emotional impairment;

   d. The degree of cooperation to be required; and

   e. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

4. In all cases in which the county agency has determined that good cause exists based on a circumstance subject to change, a determination to grant a waiver must be reviewed ~~no less frequently than~~, at a minimum, once every ~~six~~ twelve months to determine if the circumstances which led to the waiver continue to exist.

5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-50. Earned income considerations.

1. Earned income must be verified and documented in the case record. Earned income may be received from a variety of sources.

2. Net earned income is determined by adding monthly net income from self-employment to other monthly earned income and subtracting the applicable deductions and disregards.

3. Except as provided in subsection 4, "monthly ~~net income from~~ self-employment~~" means~~ income is determined as follows:

   a. ~~In the case of a self-employed individual whose business does not require the purchase of goods for sale or resale, seventy-five percent of gross monthly earnings from self-employment.~~ Monthly self-employment income is one-twelfth of the business or farm income calculated from the net profit of an individual's income tax forms and schedules, plus gains or minus losses related to self-employment business that are expected to continue during the current year, minus any type of income that must be considered unearned income, and minus expenses with the exception of depreciation and depletion.

   b. ~~In the case of a self-employed individual whose business requires the purchase of goods for sale or resale, seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts, determined monthly.~~ For a business that has been operating for less than a full tax year, monthly self-employment income is the gross income from the individual's income tax forms and schedules, plus gains or minus losses related to the self-employment business that are expected to continue during the current year, minus any type of income that must be considered unearned income and minus expenses, with the exception of depreciation and depletion, divided by the number of months the business has been in operation.

   c. In the case of a business that furnishes room and board, monthly gross receipts less one hundred dollars per room and board client.

   ~~d. In the case of a self-employed individual in a service business that requires the purchase of goods or parts for repair or~~

~~replacement, twenty-five percent of gross monthly earnings from self-employment.~~

~~c.~~ d. ~~In the case of a self-employed individual who receives income other than monthly, if the most recently available federal income tax return accurately predicts income, twenty-five percent of gross annual income, plus any net gain resulting from the sale of capital items, plus ordinary gains or minus ordinary losses, divided by twelve.~~ If the most recent available federal income tax return does not accurately predict income because the business has been recently established, because the business has been terminated or subject to severe reversal, because the applicant or recipient makes a convincing showing that actual net income is substantially less than ~~twenty-five percent of gross profit~~ the amount determined, because the individual has not filed an income tax return, or because the county agency determines for any reason that actual net profits are substantially greater than ~~twenty-five percent of gross profit~~ the amount determined based on the most recent available federal income tax return, an amount determined by the county agency to represent the best estimate of monthly net income from self-employment must be used. ~~A~~ If the most recent available federal income tax return is not used or if the individual did not file a federal income tax return, the self-employed individual shall provide~~, on a monthly basis,~~ the best information available on income and ~~cost of goods~~ expenses. Income and expense statements, when available, must be used as a basis for computation. ~~If the business is farming or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.~~

4. If earnings from more than one month are received in a lump sum payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts are attributed to each of the months with respect to which the earnings were received.

5. Income received on a contractual basis is allocated equally to each of the months covered by the contract, regardless of when the contract payments are actually received, and is deemed available to be received in the months to which income is allocated.

6. The standard employment expense allowance recognizes all costs associated with employment, including transportation, uniforms, social security contributions, and income tax withholding. This standard allowance applies to adult household members and nonstudent dependent children who are employed either full time or part time.

7. The standard employment expense allowance is the greater of one hundred eighty dollars or twenty-seven percent of gross earned income

per month. This standard employment expense allowance applies to all individuals who receive an employment expenses allowance, including stepparents and parents of minor parents.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-58. Computing payment if individuals are added to the household.

1. If the individual being added to a household did not receive assistance in the previous month, assistance for the added individual is based on the pro rata portion of the additional monthly cash grant amount equal to the percentage of the month remaining after:

   a. The date of birth of a newborn, provided that the request for the newborn is made within ten days of the date of birth and the newborn's social security number or application for social security number and verification of birth are furnished within thirty days of the request; and

   b. In all other cases, the later of the date of the request or the date the individual becomes eligible.

2. If the individual being added to an existing household received a temporary assistance for needy families grant from another state in the preceding calendar month:

   a. The added individual's cash grant must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and

   b. The county agency shall compute the added individual's cash grant for the initial month of eligibility and the month following using prospective budgeting.

3. If the individual being added to an existing household received a temporary assistance for needy families grant in North Dakota during the preceding calendar month:

   a. The added individual's benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and

   b. The county agency shall compute the added individual's cash grant for the initial month of eligibility and the month following

by continuing the budget methodology which was used in the preceding month.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-68. High school graduate or general equivalency diploma incentive payment. The county agency may authorize a one-time payment of ~~two hundred fifty dollars~~ an amount determined by the department, as a special item of need, to each individual in the household upon completion of high school or receipt of general equivalency diploma.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-68.1. Housing allowance. The county agency may authorize, as a special item of need, an ~~additional fifty dollars per month~~ amount determined by the department when a family has an independent living arrangement and the members of the family have sole responsibility for all housing costs.

History: Effective January 1, 2011; amended effective January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-72. Intentional program violation - Disqualification penalties.

1. For purposes of this section:

   a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:

      (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts;

      (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of assistance provided under North Dakota Century Code chapter 50-09 or this chapter; or

      (3) Being convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual to receive temporary assistance for needy families, medicaid, supplemental

nutrition assistance program benefits, or supplemental security income simultaneously from two or more states; ~~and~~

(4) Using a temporary assistance for needy families debit card in any liquor store; any casino, gambling casino, or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state of entertainment in violation of Pub. L. 112-96, provided access to the funds is not otherwise available through an automated teller machine, financial institution, or other means within a reasonable distance of the recipient's residence; and

b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.

2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section. Additionally:

a. If a court judgment includes a temporary assistance for needy families disqualification period, the county agency shall impose the disqualification period according to the temporary assistance for needy families disqualification timeframes; or

b. If a court judgment does not include a disqualification period, the county agency shall pursue any appropriate disqualification according to temporary assistance for needy families disqualification requirements.

3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.

4. During any period of disqualification:

a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;

b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household;

c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and

d. The overpayment is recovered through a reduction, at the rate of twenty percent of the standard of need, excluding special items of need.

5. The duration of the penalty described in this section must be:

   a. One year for the first offense;

   b. Two years for the second offense;

   c. Permanent for the third and any subsequent offense; and

   d. Ten years for individuals who were convicted in federal or state court of fraudulently misrepresenting residence.

6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.

7. In cases when a disqualification penalty and other sanctions or penalties apply:

   a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and

   b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.

8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.

9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.

10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the household may receive during the disqualification period.

11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual

members of the overpaid assistance unit whether or not currently a recipient.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

75-02-01.2-72.1. Denial of assistance for fugitive felons, probation and parole violators, and certain convicted drug offenders.

1. An individual may not be included in the cash grant if the individual is:

   a. Fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state; or

   b. Violating a condition of probation or parole imposed under federal or state law~~; or~~.

   ~~c. Convicted of a felony offense for an act which occurred after August 22, 1996, which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.~~

2. An individual may not be included in the cash grant for a period of seven years from the date of the most recent felony conviction, if the individual is convicted of a felony offense for an act which occurred after August 22, 1996, which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.

~~2.~~ 3. During any period of disqualification:

   a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;

   b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household; and

c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible.

History: Effective January 1, 2003; amended effective June 1, 2005; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02; 50-09-29

75-02-01.2-73. Health tracks. ~~All~~ The county agency may authorize an amount to be determined by the department, as a special item of need, to all members of a household, under age twenty-one, who complete a health tracks screening ~~are eligible for a minimum twenty-five dollar payment, as a special item of need~~. This amount may only be authorized and issued once every twelve months, beginning with the date of the screening.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2014.
General Authority: NDCC 50-09-02, 50-09-25
Law Implemented: NDCC 50-09-02

CHAPTER 75-02-06

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

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.

2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.

3. "Adjustment factor" means the inflation rate for nursing home services used to develop the legislative appropriation for the department for the applicable rate year.

4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.

5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.

6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:

   a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;

   b. A sale and leaseback to the same licensee;

   c. A transfer of an interest to a trust;

   d. Gifts or other transfers for nominal or no consideration;

   e. A merger of two or more related organizations;

   f. A change in the legal form of doing business;

   g. The addition or deletion of a partner, owner, or shareholder; or

   h. A sale, merger, reorganization, or any other transfer of interest between related organizations.

7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.

8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.

9. "Certified nurse aide" means:

   a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or

   b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.

10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.

11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.

12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.

13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.

14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.

15. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.

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

17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.

18. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised ~~2008~~ 2013 edition.

20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.

21. "Direct care costs" means the cost category for allowable nursing and therapy costs.

22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.

23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.

24. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.

25. "Established rate" means the rate paid for services.

26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for individuals with ~~developmental~~ intellectual disabilities.

27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.

28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.

29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.

30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

31. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.

32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.

33. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.

34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.

35. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.

36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.

37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".

38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.

40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute care unit, intermediate care facility for individuals with intellectual disabilities, or basic care facility.

41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.

42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.

43. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.

44. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].

45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.

46. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.

47. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.

48. "Noncovered day" means a resident day that is not payable by medical assistance but is counted as a resident day.

49. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.

50. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

51. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from

a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.

52. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.

53. "Private room" means a room equipped for use by only one resident.

54. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.

55. "Provider" means the organization or individual who has executed a provider agreement with the department.

56. "Rate year" means the calendar year from January first through December thirty-first.

57. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.

58. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.

59. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.

60. "Resident" means a person who has been admitted to the facility, but not discharged.

61. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident

day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.

62. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.

63. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.

64. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.

65. "Standardized resident day" means a resident day times the classification weight for the resident.

66. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an intermediate care facility for individuals with intellectual disabilities, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waivered services.

67. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.

68. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005; October 1, 2010; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-03. Depreciation.

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.

   a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.

   b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.

   c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.

2. Depreciation methods.

   a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.

   b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

      (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or

(2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.

c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

(1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and

(2) A composite remaining useful life for movable equipment, determined from the seller's records.

3. Acquisitions.

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.

b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.

4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.

6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden

of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:

   (1) Purchase price paid by the purchaser;

   (2) Fair market value at the time of the sale; or

   (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.

b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.

c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.

d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.

e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.

f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.

g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.

7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.

a. Effective July 1, ~~2009~~ 2013, the per bed limitation basis for double occupancy is ~~$112,732~~ $122,846 and for a single occupancy is ~~$169,098~~ $184,271.

b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.5.

c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.

d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.

e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.

f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.

g. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007; July 1, 2009; January 1, 2014.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

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

1. Political contributions;

2. Salaries or expenses of a lobbyist;

3. Advertising designed to encourage potential residents to select a particular facility;

4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;

5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-06-02.5;

6. Costs incurred for activities directly related to influencing employees with respect to unionization;

7. Cost of memberships in sports, health, fraternal, or social clubs or organizations, such as elks, country clubs, knights of columbus;

8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies (including all dues unless an allocation of dues to such costs is provided);

9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, or kiwanis, in excess of one thousand five hundred dollars per cost reporting period;

10. Home office costs not otherwise allowable if incurred directly by the facility;

11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockholder and investment analysis;

12. Corporate costs not related to resident care, including reorganization costs; costs associated with acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with a transaction described in subsection 3 of section 75-02-06-07;

and costs relating to the issuance and sale of capital stock or other securities;

13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;

14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;

15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care;

16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility;

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

18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;

19. Depreciation expense for facility assets not related to resident care;

20. Nonnursing facility operations and associated administration costs;

21. Direct costs or any amount claimed to medicare for medicare utilization review costs;

22. All costs for services paid directly by the department to an outside provider, such as prescription drugs;

23. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:

a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;

b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and

c. The facility documents all costs associated with a vehicle not exclusively used by the facility;

24. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;

25. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;

26. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;

27. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;

28. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that benefit all eligible employees;

29. Employment benefits associated with salary costs not includable in a rate set under this chapter;

30. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;

31. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;

32. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;

33. The following taxes:

a. Federal income and excess profit taxes, including any interest or penalties paid thereon;

b. State or local income and excess profit taxes;

c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;

d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;

e. Taxes on property not used in the provision of covered services;

f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider; and

g. Self-employment (FICA) taxes applicable to persons including individual proprietors, partners, members of a joint venture;

34. The unvested portion of a facility's accrual for sick or annual leave;

35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds;

36. Hair care, other than routine hair care, furnished by the facility;

37. The cost of education unless:

a. The facility is claiming an amount for repayment of an employee's student loans related to educational expenses incurred by the employee prior to the current cost report year provided:

(1) The education was provided by an accredited academic or technical educational facility;

(2) The allowable portion of a student loan relates to education expenses for materials, books, or tuition and does not include any interest expense;

(3) The education expenses were incurred as a result of the employee being enrolled in a course of study that prepared the employee for a position at the facility, and the employee is in that position; and

(4) The facility claims the amount of student loan repayment assistance at a rate that does not exceed two dollars and twenty-five cents per hour of work performed by the employee in the position for which the employee received

education, provided the amount claimed per employee may not exceed the lesser of the allowable student loan or three thousand seven hundred fifty dollars per year, or an aggregate of fifteen thousand dollars, and in any event may not exceed the cost of the employee's education.

b. The facility is claiming education expense for an individual who is currently enrolled in an accredited academic or technical educational facility provided:

(1) The education expense is for materials, books, or tuition;

(2) The facility claims the education expense annually in an amount not to exceed the lesser of the individual's education expense incurred during the cost report year or three thousand seven hundred fifty dollars;

(3) The aggregate amount of education expense claimed for an individual over multiple cost report periods does not exceed fifteen thousand dollars; and

(4) The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of one thousand six hundred sixty-four hours of employment after completion of the education program for each year education expense assistance was provided, as well as a repayment plan if the individual does not fulfill the contract obligations.

38. Repealed effective January 1, 1999.

39. Increased lease costs of a facility, unless:

a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;

b. The increased costs related to the ownership are charged to the lessee; and

c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;

40. At the election of the provider, the direct and indirect costs of providing therapy services to nonnursing facility residents or medicare part B therapy services, including purchase of service fees and operating or property costs related to providing therapy services;

41. Costs associated with or paid for the acquisition of licensed nursing facility capacity;

42. Goodwill;

43. Lease costs in excess of the amount allocable to the leased space as reported on the medicare cost report by a lessor who provides services to recipients of benefits under title XVIII or title XIX of the Social Security Act; and

44. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the cost report yearend.

45. Supplemental payments not offset to costs.

46. Alcohol and tobacco products.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2010; January 1, 2012; January 1, 2014.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16. Rate determinations.

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

2. a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.

   b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates,

exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.

3. Limitations.

   a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.

   b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.

   c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, ~~2006~~ 2010. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.

   d. The limit rate for each of the cost categories must be established as follows:

      (1) Historical costs for the report year ended June 30, ~~2006~~ 2010, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.

      (2) For the rate year beginning January 1, ~~2012~~ 2013, the limit rate for each cost category is:

(a) For the direct care cost category, one hundred ~~thirty-one~~ fifty-one dollars and ~~fifty-nine~~ nineteen cents;

(b) For the other direct care cost category, ~~twenty-four~~ twenty-five dollars and ~~sixty-seven~~ forty-six cents; and

(c) For the indirect care cost category, ~~sixty-two~~ sixty-five dollars and ~~forty-two~~ thirteen cents.

e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.

f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:

(1) Actual census for the report year; or

(2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:

(a) Multiplied times three hundred sixty-five; and

(b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.

g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:

(1) The facility has reduced licensed capacity; or

(2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.

h. The department may waive the application of paragraph 2 of subdivision f for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.

4. An adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting the limit rates for direct care costs, other direct care costs, and indirect care costs under

subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.

5. Rate adjustments.

a. Desk audit rate.

(1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by ~~telephone~~ facsimile transmission or electronic mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.

(2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.

(3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.

(4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.

(5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.

(6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

b. Final rate.

(1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.

(2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.

(3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.

(4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.

(5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:

(a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

(b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.

(c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.

(d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

(1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

(2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.

(3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.

(4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.

b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.

c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.

d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

a. Rates for a facility changing ownership during the rate period are set under this subdivision.

(1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:

(a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

(b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

(2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:

(a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

(b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

(3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate

years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.

(1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.

(2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report

year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.

(3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.

(4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.

c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must be established based on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.

f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.

g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

8. One-time adjustments.

a. Adjustments to meet certification standards.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

(2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:

(a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;

(b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and

(c) Provide a detailed list of any other costs necessary to meet survey standards.

(3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.

(4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.

(2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:

(a) An explanation as to why the facility believes the expense was unforeseeable;

(b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and

(c) A detailed breakdown of the unforeseeable expenses by expense line item.

(3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.

(4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

(5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

c. Adjustment to historical operating costs.

(1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.

(2) The following conditions must be met before a facility can receive the adjustment:

(a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;

(b) The facility shall document all available resources, including efficiency incentives, if used to increase

nursing hours, are not sufficient to meet the minimum standards; and

(c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.

(3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.

(4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.

(5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.

d. Adjustments for disaster recovery costs when evacuation of residents occurs.

(1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.

(2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.

(3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.

(4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.

(5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.

9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012; January 1, 2014.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-17. Classifications.

1. A facility shall complete a resident assessment for any resident occupying a licensed facility bed, except a respite care, hospice inpatient respite care, or hospice general care resident.

2. A resident must be classified in one of forty-eight classifications based on the resident assessment. If a resident assessment is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be included in group AAA, not classified, until the next required resident assessment is performed in accordance with subsection 3. For purposes of determining standardized resident days, any resident day classified as group AAA must be assigned the relative weight of one. A resident, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, who has not been classified, must be billed at the group AAA established rate. The case-mix weight for establishing the rate for group AAA is 0.45. Days for a respite care, hospice inpatient respite care, or hospice general inpatient care resident who is not classified must be given a weight of one when determining standardized resident days. Therapeutic,

hospital, or institutional leave days that are resident days must be given a weight of 0.45 when determining standardized resident days.

3. Resident assessments must be completed as follows:

   a. The facility shall assess the resident within the first fourteen days after any admission or return from an acute hospital stay.

   b. The facility shall assess the resident quarterly after any admission or return from an acute hospital stay. The quarterly assessment reference period ends on the day of the third subsequent month corresponding to the day of admission or return from an acute hospital stay, except if that month does not have a corresponding date, the quarterly assessment reference period ends on the first day of the next month. The assessment reference period begins seven days prior to the ending date of a quarterly assessment period. The assessment reference date used for the resident assessment instrument must be within the assessment reference period.

   c. An assessment must be submitted upon initiation of rehabilitation therapy if initiation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.

   d. An assessment must be submitted upon discontinuation of rehabilitation therapy if discontinuation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.

4. The resident classification is based on resident characteristics and health status recorded on the resident assessment instrument, including the ability to perform activities of daily living, diagnoses, and treatment received. The resident is first classified in one of seven major categories. The resident is then classified into subdivisions of each major category based on the resident's activities of daily living score and whether nursing rehabilitation services are needed or the resident has signs of depression.

5. For purposes of this section:

   a. A resident's activities of daily living score used in determining the resident's classification is based on the amount of assistance, as described in the resident assessment instrument, the resident needs to complete the activities of bed mobility, transferring, toileting, and eating;

   b. A resident has a need for nursing rehabilitation services if the resident receives two or more of the following for at least fifteen

minutes per day for at least six of the seven days preceding the assessment:

(1) Passive or active range of motion;

(2) Amputation or prosthesis care;

(3) Splint or brace assistance;

(4) Dressing or grooming training;

(5) Eating or swallowing training;

(6) Bed mobility or walking training;

(7) Transfer training;

(8) Communication training; or

(9) Urinary toileting, bladder, or bowel training program; and

c. A resident has signs of depression if the resident's total severity score for depression is at least ten based on the following:

(1) Little interest or pleasure in doing things;

(2) Feeling down, depressed, or hopeless;

(3) Trouble falling asleep or staying asleep or sleeping too much;

(4) Feeling tired or having little energy;

(5) Poor appetite or overeating;

(6) Feeling bad or failure or let self or others down;

(7) Trouble concentrating on things;

(8) Moving or speaking slowly or being fidgety or restless;

(9) Thoughts of being better off dead or hurting self; or

(10) Short-tempered or easily annoyed.

6. The major categories in hierarchical order are:

a. Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy. A resident who qualifies for the rehabilitation category is assigned a subcategory

based on the resident's activities of daily living score. The rehabilitation category may be assigned within a classification period based on initiation or discontinuation dates if therapies are begun or discontinued on any date not within an assessment reference period.

b. Extensive services category. To qualify for the extensive services category, a resident must have an activities of daily living score of at least two and within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator, respirator, or infection isolation while a resident.

c. Special care high category.

(1) To qualify for the special care high category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:

(a) Comatose and completely dependent for activities of daily living;

(b) Septicemia;

(c) Diabetes with:

[1] Insulin injections seven days a week; and

[2] Insulin order changes on two or more days;

(d) Quadriplegia with an activities of daily living score of at least five;

(e) Chronic obstructive pulmonary disease and shortness of breath when lying flat;

(f) A fever in combination with:

[1] Pneumonia;

[2] Vomiting;

[3] Weight loss; or

[4] Tube feedings <u>while a resident</u> that comprise at least:

[a] Twenty-six percent of daily caloric requirements and at least five hundred

and one milliliters of fluid through the tube per day; or

[b] Fifty-one percent of daily caloric requirements;

(g) Parenteral or intravenous feedings provided in and administered in and by the nursing facility; or

(h) Respiratory therapy seven days a week.

(2) A resident who qualifies for the special care category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.

d. Special care low category.

(1) To qualify for the special care low category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:

(a) Multiple sclerosis, cerebral palsy, or Parkinson's disease with an activities of daily living score of at least five;

(b) Respiratory failure and oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;

(c) Tube feedings <u>while a resident</u> that comprise at least:

[1] Twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or

[2] Fifty-one percent of daily caloric requirements.

(d) Two or more stage two pressure ulcers with two or more skin treatments;

(e) Stage three or four pressure ulcer with two or more skin treatments;

(f) Two or more venous or arterial ulcers with two or more skin treatments;

(g) One stage two pressure ulcer and one venous or arterial ulcer with two or more skin treatments;

(h) Foot infection, diabetic foot ulcer, or other open lesion of foot with application of dressings to the foot;

(i) Radiation treatment while a resident; or

(j) Dialysis treatment while a resident.

(2) A resident who qualifies for the special care low category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.

e. Clinically complex category.

(1) To qualify for the clinically complex category, a resident must have one or more of the conditions for the extensive services or special care categories with an activities of daily living score of zero or one or have at least one of the following conditions, treatments, or circumstances:

(a) Pneumonia;

(b) Hemiplegia or hemiparesis with an activities of daily living score of at least five;

(c) Surgical wounds or open lesions with at least one skin treatment;

(d) Burns;

(e) Chemotherapy while a resident;

(f) Oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;

(g) Intravenous medication provided, instilled, and administered by staff within the facility while a resident; or

(h) Transfusions while a resident.

(2) A resident who qualifies for the clinically complex category is assigned a subcategory based on the resident's activities

of daily living score and whether the resident has signs of depression.

f. Behavioral symptoms and cognitive performance category. To qualify for the behavioral symptoms and cognitive performance category, a resident must have an activities of daily living score of less than six.

(1) To qualify for the behavioral symptoms and cognitive performance category, a resident must either:

(a) Be cognitively impaired based on one of the following:

[1] A brief interview of mental status score of less than ten;

[2] Coma and completely dependent for activities of daily living;

[3] Severely impaired cognitive skills; or

[4] Have a severe problem being understood or severe cognitive skills problem and two or more of the following:

[a] Problem being understood;

[b] Short-term memory problem; or

[c] Cognitive skills problem.

(b) Exhibit behavioral symptoms with one or more of the following symptoms:

[1] Hallucinations;

[2] Delusions;

[3] Physical or verbal behavior symptoms directed toward others on at least four days in the seven days preceding the assessment;

[4] Other behavioral symptoms not directed toward others on at least four days in the seven days preceding the assessment;

[5] Rejection of care on at least four days in the seven days preceding the assessment; or

[6] Wandering on at least four days in the seven days preceding the assessment.

(2) A resident who qualifies for the behavioral symptoms and cognitive performance category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.

g. Reduced physical functioning category. To qualify for the reduced physical functioning category, a resident may not qualify for any other group. A resident who qualifies for the reduced physical functioning category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.

7. Except as provided in subsection 2, each resident must be classified into a case-mix class with the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:

a. Rehabilitation with an activities of daily living score of fifteen or sixteen (group RAE); case-mix weight: 1.65.

b. Rehabilitation with an activities of daily living score between eleven and fourteen, inclusive (group RAD); case-mix weight: 1.58.

c. Rehabilitation with an activities of daily living score between six and ten, inclusive (group RAC); case-mix weight: 1.36.

d. Rehabilitation with an activities of daily living score between two and five, inclusive (group RAB); case-mix weight: 1.10.

e. Rehabilitation with an activities of daily living score of zero or one (group RAA); case-mix weight: 0.82.

f. Extensive services with an activities of daily living score of at least two and received tracheostomy care and ventilator or respirator care (group ES3); case-mix weight: 3.00.

g. Extensive services with an activities of daily living score of at least two and received tracheostomy, ventilator, or respirator care (group ES2); case-mix weight: 2.23.

h. Extensive services with an activities of daily living score of at least two and required infection isolation (group ES1); case-mix weight: 2.22.

i. Special care high with depression and an activities of daily living score of fifteen or sixteen (group HE2); case-mix weight: 1.88.

j. Special care high with an activities of daily living score of fifteen or sixteen (group HE1); case-mix weight: 1.47.

k. Special care high with depression and an activities of daily living score between eleven and fourteen, inclusive (group HD2); case-mix weight: 1.69.

l. Special care high with an activities of daily living score between eleven and fourteen, inclusive (group HD1); case-mix weight: 1.33.

m. Special care high with depression and an activities of daily living score between six and ten, inclusive (group HC2); case-mix weight: 1.57.

n. Special care high with an activities of daily living score between six and ten, inclusive (group HC1); case-mix weight: 1.23.

o. Special care high with depression and an activities of daily living score between two and five, inclusive (group HB2); case-mix weight: 1.55.

p. Special care high with an activities of daily living score between two and five, inclusive (group HB1); case-mix weight: 1.22.

q. Special care low with depression and an activities of daily living score of fifteen or sixteen~~, inclusive~~ (group LE2); case-mix weight: 1.61.

r. Special care low with an activities of daily living score of fifteen or sixteen~~, inclusive~~ (group LE1); case-mix weight: 1.26.

s. Special care low with depression and an activities of daily living score between eleven and fourteen, inclusive (group LD2); case-mix weight: 1.54.

t. Special care low with an activities of daily living score between eleven and fourteen, inclusive (group LD1); case-mix weight: 1.21.

u. Special care low with depression and an activities of daily living score between six and ten, inclusive (group LC2); case-mix weight: 1.30.

v. Special care low with an activities of daily living score between six and ten, inclusive (group LC1); case-mix weight: 1.02.

w. Special care low with depression and an activities of daily living score between two and five, inclusive (group LB2); case-mix weight: 1.21.

x. Special care low with an activities of daily living score between two and five, inclusive (group LB1); case-mix weight: 0.95.

y. Clinically complex with depression and an activities of daily living score of fifteen or sixteen (group CE2); case-mix weight: 1.39.

z. Clinically complex with an activities of daily living score of fifteen or sixteen (group CE1); case-mix weight: 1.25.

aa. Clinically complex with depression and an activities of daily living score between eleven and fourteen, inclusive (group CD2); case-mix weight: 1.29.

bb. Clinically complex with an activities of daily living score between eleven and fourteen, inclusive (group CD1); case-mix weight: 1.15.

cc. Clinically complex with depression and an activities of daily living score between six and ten, inclusive (group CC2); case-mix weight: 1.08.

dd. Clinically complex with an activities of daily living score between six and ten, inclusive (group CC1); case-mix weight: 0.96.

ee. Clinically complex with depression and an activities of daily living score between two and five, inclusive (group CB2); case-mix weight: 0.95.

ff. Clinically complex and an activities of daily living score between two and five, inclusive (group CB1); case-mix weight: 0.85.

gg. Clinically complex with depression and an activities of daily living score of zero or one (group CA2); case-mix weight: 0.73.

hh. Clinically complex and an activities of daily living score of zero or one (group CA1); case-mix weight: 0.65.

ii. Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score between two and five, inclusive (group BB2); case-mix weight: 0.81.

jj. Behavioral symptoms and cognitive performance with an activities of daily living score between two and five, inclusive (group BB1); case-mix weight: 0.75.

kk. Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score of zero or one (group BA2); case-mix weight: 0.58.

ll. Behavioral symptoms and cognitive performance with an activities of daily living score of zero or one (group BA1); case-mix weight: 0.53.

mm. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of fifteen or sixteen, (group PE2); case-mix weight: 1.25.

nn. Reduced physical functioning with an activities of daily living score of fifteen or sixteen, (group PE1); case-mix weight: 1.17.

oo. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between eleven and fourteen, inclusive (group PD2); case-mix weight: 1.15.

pp. Reduced physical functioning with an activities of daily living score between eleven and fourteen, inclusive (group PD1); case-mix weight: 1.06.

qq. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group PC2); case-mix weight: 0.91.

rr. Reduced physical functioning with an activities of daily living score between six and ten, inclusive (group PC1); case-mix weight: 0.85.

ss. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between two and five, inclusive (group PB2); case-mix weight: 0.70.

tt. Reduced physical functioning with an activities of daily living score between two and five, inclusive (group PB1); case-mix weight: 0.65.

uu. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of zero or one (group PA2); case-mix weight: 0.49.

vv. Reduced physical functioning with an activities of daily living score of zero or one (group PA1); case-mix weight: 0.45.

8. The classification is effective the date the resident assessment must be completed in all cases except an admission or for a return from an acute hospital stay. The classification for an admission or for a return is effective the date of the admission or return.

9. A facility complying with any provision of this section that requires a resident assessment must use the minimum data set in a resident

assessment instrument that conforms to standards for a resident classification system described in 42 CFR 413.333.

History: Effective September 1, 1987; amended effective January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; October 1, 2010; January 1, 2012; January 1, 2014.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

CHAPTER 75-03-14
FAMILY FOSTER ~~CARE HOMES~~ 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. ~~In~~ Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Adult" means a person twenty-one years of age or older.

2. ~~"Department" means the department of human services.~~ "Background check" means a child protection services check in each state that the individual has resided in the previous five years and a criminal history record investigation.

~~3. "Home" means family foster home.~~

~~4.~~ 3. "Regional center" means the regional human service center.

~~5.~~ 4. "Supervising agency" means the agency or person having care, custody, and control of the foster child 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.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-00.1, 50-11-06.8

75-03-14-02. License.

1. Application for a family foster home license must be made ~~in the manner and form~~ as prescribed by the department.

2. The family foster home licensing process requires completion and documentation of the following items, which must be received by the department ~~in order~~ 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 check;

f. Home visits; and

g. Home assessment.

3. The license is issued for a specific number of children, a specified age group of the children, and the sex of the child or children. The duration of the license is not to exceed ~~a one-year period~~ one year.

4. The department may issue a license ~~may be issued~~ with stated limitations, restrictions, and conditions.

5. The license is not transferable and is valid only for the physical location of the family foster home for children at the time ~~of issuance~~ the license is issued, or at another location for a period not to exceed sixty days, provided that the ~~supervising agency~~ authorized agent performs an onsite visit within seven days of the move, and thereafter approves the temporary location.

6. After reviewing an individual's application for ~~family foster home~~ licensure, the department may deny a license:

   a. If the application contains fraudulent information, an untrue representation, or is incomplete;

   b. If the family foster home for children is in an unsanitary condition;

   c. If the family foster home for children is not properly equipped to provide for the health and safety of the children served; or

   d. If the applicant ~~or applicants are~~ is not in compliance with the regulations prescribed by the department for the operation of a family foster home for children.

7. ~~In those cases where~~ If the home of a Native American family located on a recognized Indian reservation in this state is identified as a family foster home for children, and is not subject to the jurisdiction of the state of North Dakota for family foster home for children licensing purposes, ~~is located on a recognized Indian reservation in North Dakota,~~ the

department shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer ~~must be accepted~~ in lieu of ~~a~~ completing the licensing procedure if the affidavit represents the following:

a. An investigation of the family foster home for children was completed by the tribe's child welfare agency or tribal council; and

b. The prospective family foster home for children is in compliance with the standards required by North Dakota Century Code section 50-11-02.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-01, 50-11-02

75-03-14-03. Minimum physical standards for the family foster home for children.

1. The family foster home for children must be a dwelling, mobile home, housing unit, or apartment occupied by an individual or a single family.

2. The family foster home ~~should~~ for children must have an operational telecommunications device, and must have available to it some means to make immediate contact with authorities in emergencies.

3. a. The family foster home ~~shall~~ for children must have sleeping rooms adequate for the foster care family and the foster children.

   b. All sleeping rooms must be outside rooms and have ample window space for light and ventilation.

   c. ~~Basements may be used for sleeping accommodations for children twelve years of age and older.~~ Basement ~~bedrooms~~ sleeping rooms must be equipped with the appropriate fire alarms and smoke detectors as recommended by the local fire department or state fire marshal. A basement which ~~shall~~ will be used for the care of foster children must be equipped with more than one exit. One exit may be an accessible window. Children in basement sleeping rooms must be able to demonstrate their ability to depart from all exits.

4. Exterior doors must be maintained ~~in such a manner which would~~ to permit easy exit. Interior doors ~~should be designed to~~ must prevent children from being trapped.

5. Every closet door must be one that can be opened from the inside. ~~Any bathroom~~ Bathroom doors must be ~~designed~~ installed so ~~that the~~

~~opening of~~ the door, when locked ~~door can be accomplished~~, may be opened from the outside in an emergency.

6. The house and premises must be clean, neat, and free from hazards that jeopardize health and safety. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.

7. The family foster home for children must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The house and grounds must be in compliance with any applicable state and local zoning requirements.

8. Any source other than an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample ~~should~~ must be tested and approved by the North Dakota state department of health and the report submitted to the ~~licensing agency~~ department.

9. The milk supply must be obtained from ~~an approved~~ a department-approved source.

10. 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. ~~All~~ The adult in charge of the family foster home shall ensure all deficiencies noted during the inspection ~~must be~~ are remedied.

11. 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 or state fire marshal. ~~They~~ 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.

History: Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-04. Qualifications of persons residing in the family foster home for children.

1. A person residing in the family foster home for children, except a foster child or ward of the court, may not have a present condition of substance abuse or emotional instability. ~~No person may smoke, in the foster home, in circumstances which present a hazard to the health of a foster child. All foster parents should be aware of the~~

~~potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity. If a condition of substance abuse or emotional instability occurs in a foster home at a time when a foster child is in placement, every effort should be made to keep the placement intact if the resident of the foster home is seeking treatment for the problem. No further placements will be made until successful completion of the treatment has occurred. A resident of a foster home, who has a past condition of substance abuse or emotional instability, should have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to licensure.~~

2. No person may smoke in the family foster home for children, in circumstances which present a hazard to the health of the foster child, or in an enclosed area when the foster child 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.

3. If a condition of substance abuse or emotional instability occurs in a family foster home for children at a time when a foster child is in placement, every effort should be made to keep the placement intact if the resident of the family foster home for children who is suffering from substance abuse or emotional instability is seeking treatment for the condition. The supervising agency may make no further placements in that family foster home until the resident suffering from the condition successfully completes treatment for the condition. A resident of a family foster home for children, who has a past condition of substance abuse or emotional instability, may have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to an applicant obtaining licensure.

~~2.~~ 4. A ~~person residing in~~ resident of the family foster home for children, except a foster child, may not have been the subject of a child abuse or neglect assessment where a services-required decision was made unless the director or foster care supervisor of the regional center, after making appropriate consultation with persons qualified to evaluate the capabilities of the ~~home's~~ resident, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and

a. The ~~home's~~ resident can demonstrate the successful completion of an appropriate therapy; or

b. The ~~home's~~ resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

~~3.~~ 5. All foster parents, prior to licensing and annually thereafter, ~~must~~ 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 ~~determined~~ required by the department. The department may require a physical examination or psychological testing of any resident of the family foster home for children as ~~deemed~~ the department determines necessary. The cost of any physical examinations required pursuant to this subsection is the responsibility of the ~~supervising agency~~ authorized agent. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.

~~4.~~ 6. Physical disabilities or age of foster parents do not affect licensing of the family foster home for children 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.

~~5.~~ 7. ~~A person openly and notoriously living with a person of the opposite sex as a married couple without being married to the other person may not be eligible for licensure.~~ All foster parents or potential parents must demonstrate a working knowledge and comply with the department's approved family foster home for children preservice training competencies.

8. Initial and annual fire safety training hours will not be counted toward the minimum number of training hours required for initial or annual licensing.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-04.1. Criminal conviction - Effect on licensure.

1. A family foster ~~care~~ home for children applicant, family foster ~~care~~ home for children provider, or members of the family foster ~~care~~ home for children must not 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; or 12.1-18, kidnapping; North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar

elements as required for conviction under any of the enumerated North Dakota statutes; or

b. An offense, other than an offense identified in subdivision a, 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, 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. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on ~~the~~ an individual's ability to ~~serve the public in a capacity involving the provision of~~ provide foster care ~~to~~ for children.

3. ~~In the case of~~ If the offense is a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that ~~the~~ an individual has been sufficiently rehabilitated if ~~fifteen~~ 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. The department may not be compelled to make such determination.

4. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

a. Acknowledged by the individual; or

b. ~~Reported to~~ Discovered by the ~~agency~~ authorized agent or department as a result of a background check.

History: Effective April 1, 2004; amended effective January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-05. Operation of the family foster home for children.

1. The foster parents shall admit to the family foster home for children, ~~at any reasonable time,~~ public officials, such as fire and building inspectors, for the purpose of determining fire and building safety. ~~For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the public official.~~

2. The foster parents shall admit 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 ~~and~~ or any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.

3. The foster parents ~~must~~ shall cooperate with the supervising agency in that agency's efforts to develop plans for the child, implement those plans, and meet the needs of the child and the child's family. The foster parents ~~must~~ shall cooperate with the supervising agency in developing plans for the child to visit with the child's parents or guardian. If the foster parents agree, and it is appropriate, these visits may take place in the family foster ~~parents'~~ home for children. 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 foster parents need not admit ~~a foster child's parent, relative, or guardian~~ 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. The foster parents may not accept other foster children or special education boarding care children, or accept children for supplemental parental care~~, as defined in North Dakota Century Code chapter 50-11.1,~~ into their family foster home for children without the prior approval of the ~~supervising~~ authorized agency. All changes in the number of persons living in the foster home must be immediately reported to the ~~supervising~~ authorized agency.

5. When a foster child is placed in substitute care during the absence of the foster parents, prior approval of the substitute care must be given by the supervising agency. Prior approval is not required for short periods of substitute care such as a portion of one day. A foster child may not be removed from this state without the prior approval of the supervising agency.

6. The foster parents must make opportunities available for a foster child to attend religious ceremonies chosen by the foster child, or that child's parents, within the community in which the foster family resides. The

foster parents must respect and not interfere with the religious belief of the foster child and the foster child's family.

7. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with the foster child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding.

   a. No foster child may be kicked, bitten, punched, spanked, shaken, pinched, roughly handled, or struck with an inanimate object by foster parents or any other adult living in the family foster home for children.

   b. Cruel and unusual punishments are prohibited, including:

      (1) Physically strenuous work or exercise, when used solely as a means of punishment; and

      (2) Forcing a foster child to maintain an uncomfortable position or continuously repeat physical movements, when used soley as a means of punishment.

   ~~b.~~ c. Authority to discipline may not be delegated to or be accomplished by children.

   ~~c.~~ d. Separation, when used as discipline, must be brief and appropriate to ~~a~~ the foster child's age and circumstances, and ~~the young~~ when used to discipline a foster child, must be within hearing of an adult in a safe, lighted, well-ventilated room. ~~No~~ A foster child may not be isolated in a locked room or closet.

   ~~d.~~ e. ~~No~~ A foster child may not be physically disciplined for lapses in toilet training.

   ~~e.~~ f. Verbal abuse or derogatory remarks about ~~the~~ a foster child, the foster child's family, race, religion, or cultural background may not be used ~~or~~ and are not permitted.

   ~~f.~~ g. ~~No~~ A foster child may not be force fed unless medically prescribed and administered under a physician's care.

   ~~g.~~ h. Deprivation of means, including food, clothing, shelter, hygiene, and medical care, may not be used as a form of discipline.

8. All information given to the foster parents by the supervising agency or the foster child's family concerning the foster child must remain confidential and may not be disclosed to any person without prior approval of the supervising agency.

9. All family foster care for children payments must be used to meet the needs of the foster child.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-06. Permanency planning child and family team.

1. Every county social service board ~~must~~ shall have a county permanency planning child and family team that meets not less than once each quarter in which the county social service board acts as a supervising agency to any foster child. If the county social service board acts as supervising agency for five or more children in foster care, the county permanency planning child and family team must meet at least once each month. The permanency planning child and family team will be cochaired by the regional supervisor and the county director or their designee.

2. The supervising agency ~~must~~ shall invite the foster child's parents, the foster parents, and the guardian ad litem to participate in the permanency planning 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 ~~must be determined by the supervising agency~~ and shall document the basis ~~for the determination must be made a part of~~ in the foster child's file.

3. The foster parents shall participate in the permanency planning child and family team 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.

4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide requested 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. ~~In no case may the~~ The foster parents may not attempt to diminish the relationship between the foster child and the child's parents or between supervising agency staff and the foster child.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-07. Background checks required. Background checks are required for all adults living in the family foster home for children:

1. Prior to initial family foster home for children licensure or approval;

2. If there is a lapse of license or approved status of the family foster home ~~of more than thirty days~~ 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.

History: Effective April 1, 2004; amended effective January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-14-08. Fingerprints excused. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been accepted and rejected. If a person is excused from providing fingerprints, the department ~~may~~ shall conduct a ~~statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check~~ nationwide name-based criminal history record investigation.

History: Effective April 1, 2004; amended effective January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-09. Relative licensing waiver. Upon written application and good cause shown to the satisfaction of the department, the department may grant a waiver from a provision of this chapter to a family foster home for children if the proposed foster parents are relatives of a foster child. No waiver may be issued if it would result in a danger to the health and safety of any foster child cared for by the foster child's relatives in the family foster home for children. The department shall prescribe the terms of the waiver. A refusal to grant or revoke a waiver is not subject to appeal.

History: Effective January 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

TITLE 87

BOARD OF VETERINARY MEDICAL EXAMINERS

JANUARY 2014

CHAPTER 87-01-01

87-01-01-01. Organization of board of veterinary medical examiners.

1. **History.** The 1895 legislative assembly passed a law entitled "Qualifications of Veterinarians" which requires the governor to appoint a board of veterinary examiners, known as the state board of veterinary medical examiners. ~~The board consists of three practicing veterinarians who are graduates of a legally authorized veterinary school.~~

2. **Board membership.** The board consists of ~~three~~ five members (three veterinarians, one veterinary technician, and one public member) who serve three-year terms, with ~~one term~~ no more than two terms expiring each year.

3. **Compensation of members of board.** A member of the board may receive for each day during which that member is actually engaged in the performance of the duties of office a per diem in the amount of one hundred twenty-five dollars.

4. **Executive secretary.** The board employs an executive secretary and such other persons necessary to carry out administration of the board's activities.

5. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

   Dr. John R. Boyce
   Executive Secretary
   North Dakota Board of Veterinary Medical Examiners
   P.O. Box 5001
   Bismarck, North Dakota 58502

(701) 328-9540

History: Amended effective November 1, 1981; April 1, 1988; November 1, 1991; March 1, 1999; August 1, 2004; January 1, 2014.
General Authority: NDCC 28-32-02, 43-29-03
Law Implemented: NDCC 28-32-02, 43-29-02, 43-29-05, 43-29-05.1

CHAPTER 87-01.1-01

87-01.1-01-01. Examination - Waiver.

1. To qualify for a North Dakota license, each applicant must take and pass a North Dakota examination, and the national board examination~~,~~ and the clinical competency test or the North American veterinary licensing examination. The North Dakota examination is a combination written jurisprudence examination and oral interview.

2. The board adopts the passing score on the national examination recommended by the national board of veterinary medical examiners. Applicants must request that their examination scores be sent to the board.

3. The ~~national board examination and clinical competency test or the~~ North American veterinary licensing examination is required of all applicants for licensure in North Dakota who have been in practice less than five years. For an applicant who has been in practice more than five years, the applicant may petition the board to waive this requirement if the applicant meets the requirements of North Dakota Century Code section 43-29-07.2.

4. The North Dakota examination may not be waived.

5. A senior veterinary student may take the North Dakota ~~test~~ examination if the student has taken and passed the ~~national board examination and the clinical competency test or the~~ North American veterinary licensing examination and submits a letter from the dean of a veterinary college indicating the student's anticipated graduation date.

6. ~~Candidates~~ North Dakota candidates may apply for and take the North American veterinary licensing examination ~~for the first time during the testing window eight months prior to their expected graduation~~ according to eligibility criteria, deadlines, and fees specified in the annual agreement between the board and the national board of veterinary medical examiners.

7. Beginning with the fall 2007 administration of the North American veterinary licensing examination, a candidate may not take the examination more than five times, and may not take the examination at a date that is later than five years after a candidate's initial attempt. Each of the final two attempts must be at least one year from the previous attempt.

History: Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002; August 1, 2004; April 1, 2009; January 1, 2014.
General Authority: NDCC 43-29-03, 43-29-07.2
Law Implemented: NDCC 43-29-07.2

87-01.1-01-02. Examination application fee. An applicant ~~who takes~~ for the North Dakota examination must file with the board a completed application, a copy of the applicant's diploma or other official proof of graduation, and an examination fee of fifty dollars. The examination fee will not be refunded. All required material and money must be submitted thirty days prior to the examination date. ~~Candidates for initial licensure in North Dakota must submit their application at least ninety-two days prior to the opening of the testing window for the North American veterinary licensing examination.~~

History: Effective January 1, 1999; amended effective November 1, 2000; December 1, 2004; January 1, 2014.
General Authority: NDCC 43-29-07.2
Law Implemented: NDCC 43-29-07.2

CHAPTER 87-02-01

87-02-01-01. License renewal.

1. Annual license renewal forms will be ~~mailed~~ provided to all licensed veterinarians on or before June first and completed license renewal forms must be received by June thirtieth.

2. The annual license renewal fee for veterinarians is ~~sixty~~ seventy-five dollars.

3. Renewals not received by the due date will be assessed a late fee of fifty percent of the license fee.

History: Amended effective January 1, 1999; December 1, 2004; April 1, 2009; January 1, 2014.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-07.3

87-02-01-04. Educational program requirements. Veterinary continuing education may consist of the following:

1. Eight hours of in-house training including veterinary medical tapes, films, computer-based programs, and self-assessment tests relevant to the practice of veterinary medicine.

2. Programs sponsored by local, state, regional, or national veterinary associations and other continuing educational programs or training approved by the North Dakota veterinary medical examining board. The other programs or training may be approved only if they relate to the practice of veterinary medicine, as defined by subsection 8 of North Dakota Century Code section 43-29-01.1, and consist of evidence-based scientific material. The board accepts programs approved by the registry of approved continuing education of the American association of veterinary state boards.

3. Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine.

4. Up to eight hours of veterinary continuing education may relate to practice management. Programs designed to enhance the veterinarian's ability to earn money, invest money, or relating to personal financial planning are not acceptable for meeting the continuing education requirement.

5. Programs presented by pharmaceutical companies and other commercial groups may be approved, as long as they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinarian or the animal owner.

6. Eight hours of participation in a clinical setting at another veterinary practice and completion of the written report required by the board's veterinary exchange program.

Proof of attendance and verification will be necessary on request. Verification may include a printed program, certificate, brochure, handout, or syllabus that lists the topics presented, the persons doing the instruction and their qualifications, and the time for each presentation.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009; January 1, 2014.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

CHAPTER 87-05-02

87-05-02-01. Unprofessional conduct. Unprofessional conduct manifestly disqualifying a licensee from practicing veterinary medicine includes:

1. Failing to meet the minimum standards of practice.

2. Engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, in which case, proof of actual injury need not be established.

3. Claiming to have performed or charging for an act or treatment that was, in fact, not performed or given.

4. Promoting, aiding, abetting, or permitting the practice of veterinary medicine by an unlicensed person.

5. Prescribing or dispensing, delivering, or ordering delivered a controlled substance without first having established a veterinarian-client-patient relationship by having personally examined the individual animal, herd, or a representative segment or a consignment lot and determining that treatment with the controlled substance is therapeutically indicated. Use of euthanizing drugs in recognized animal shelters or government animal control facilities is exempt from this requirement.

6. Performing surgery to conceal genetic or congenital defects, in any species, with the knowledge that the surgery has been requested to deceive a third party.

7. Promoting, selling, prescribing, or using a product for which the ingredient formula is unknown to the veterinarian.

8. Failing to report to law enforcement or humane officers inhumane treatment to animals, including staged animal fights or training events for fights, the veterinarian reasonably believed occurred.

9. Fraudulently issuing or using a certificate of veterinary inspection, test chart, vaccination report, or other official form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption.

10. Willfully harassing, abusing, or intimidating a client or animal owner either physically or verbally. Taking legal action to collect for services rendered cannot be considered harassment.

11. Engaging in conduct which willingly and knowingly leads to the spread of contagious disease from one herd or animal to another.

12. Advertising, stating, or implying that the veterinarian is a certified or recognized specialist in any given field unless the veterinarian is a diplomate of a speciality board recognized by the American veterinary medical association.

History: Effective August 1, 2004; amended effective January 1, 2014.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-14

TITLE 113

INFORMATION TECHNOLOGY DEPARTMENT

JANUARY 2014

ARTICLE 113-01

RESERVED

ARTICLE 113-02

NORTH DAKOTA HEALTH INFORMATION NETWORK

Chapter
113-02-01 North Dakota Health Information Newtork

CHAPTER 113-02-01
NORTH DAKOTA HEALTH INFORMATION NETWORK

Section
113-02-01-01 Organization of the Health Information Technology Office
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113-02-01-01. Organization of the health information technology office.

1. History. The sixty-first legislative assembly created the health information technology office in the department of information technology and created the health information technology advisory committee.

2. Purpose. The health information technology office, upon recommendations of the advisory committee, shall implement a statewide interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health; apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology; and establish a health information technology loan program to provide loans to health care providers for the purpose of purchasing and upgrading certified electronic health record technology, training personnel in the use of such technology, and improving the secure electronic exchange of health information.

   The health information advisory committee shall collaborate with and make recommendations to the health information technology office. The health information technology advisory committee consists of the state chief information officer or the chief information officer's designee, the state health officer or the state health officer's designee, the governor or the governor's designee, the executive director of the department of

human services or the executive director's designee, the chairman of the house human services committee and the chairman of the senate human services committee or if either or both of them are unwilling or unable to serve then the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced, and individuals appointed by the governor to represent a broad range of public and private health information technology stakeholders.

3. Inquiries. General inquiries regarding the North Dakota health information technology office should be addressed to:

North Dakota Health Information Technology Office
600 East Boulevard Avenue, Dept. 113
Bismarck, ND 58505-0100

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 28-32-02.1, 54-59-25, 54-59-26, 54-59-27, 54-59-28, 54-59-29, 54-59-30

113-02-01-02. Definitions. Throughout this title, unless specifically stated otherwise, the following terms mean:

1. "Authorized user" means a person who is authorized by a participant to participate in the North Dakota health information network and includes health care practitioners, employees, contractors, agents, or business associates of a participant. Those who may qualify as authorized users may be further defined in the North Dakota health information network policies and procedures.

2. "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under 45 CFR 164.402 which compromises the security or privacy of the protected health information.

3. "Business associate" has the meaning set forth in 45 CFR 160.103 and generally means a person who creates, receives, maintains, or transmits protected health information in the performance of a function or activity on behalf of the covered entity. A subcontractor of a business associate may also be considered a business associate.

4. "Individual" means a person who is the subject of protected health information and has the meaning set forth in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

5. "Opt out" means that an individual has chosen to not participate in the North Dakota health information network.

6. "Participant" includes any organization, health care practitioner or institution, health plan, or clearinghouse who has executed a written participation agreement and business associate agreement with the North Dakota health information network.

7. "Protected health information" means individually identifiable health information (any oral or recorded information relating to the past, present, or future physical or mental health of an individual; the provision of health care to the individual; or the payment for health care) maintained by any medium and transmitted by electronic media or in any other form or medium.

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 23-12-19, 54-59-25, 54-59-26, 54-59-28, 54-59-29

113-02-01-03. Individual partcipation.

1. Purpose. The North Dakota health information network functions to provide for the electronic use and disclosure of a participating individual's protected health information by qualifying participants and their authorized users.

2. Individual participation.

   a. Individual participation in the North Dakota health information network is voluntary. All individuals are considered to be participating until an individual has made a written decision to opt out of participation in the North Dakota health information network. Unless an individual elects to not participate, the individual's protected health information will be available through the North Dakota health information network for the purposes specified in section 113-02-01-05.

   b. An individual may choose not to participate completely or except for a medical emergency by completing and submitting the designated form to the North Dakota health information network.

   c. If an individual has chosen to not participate in the North Dakota health information network, then the individual's protected health information will not be available for use and disclosure through the North Dakota health information network except as required by law, as authorized by the individual in a medical emergency, or by the provider who originally created or ordered the creation of the individual's protected health information.

   d. An individual may change a prior election by completing and submitting the designated form to the North Dakota health information network.

3. Individual rights.

a. An individual has the right to opt out of participation in the North Dakota health information network.

b. A participant may not withhold coverage or care from an individual nor may a health insurer deny an individual a health insurance benefit based solely on that individual's choice to opt out of participation in the North Dakota health information network.

c. An individual has the right to request an amendment of incorrect protected health information created by the North Dakota health information network. The North Dakota health information network may review the request if it relates to information created by it or may require participants who created the information to review the request for an amendment.

d. An individual has the right to request an accounting of disclosures as defined under 45 CFR 164.528 and 42 U.S.C. 17935 section 13405(c).

e. An individual has the right to request a copy of the individual's protected health information that is available through the North Dakota health information network. The North Dakota health information network may provide the health information directly to the individual or may require participants to provide access to individuals.

f. An individual has the right to be notified, pursuant to 45 CFR 164.404, of a breach that affects the individual's protected health information.

g. An individual has the right to file a complaint as defined in the North Dakota health information network policies and procedures.

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 23-12-19, 54-59-25, 54-59-26, 54-59-28, 54-59-29

113-02-01-04. Authorized participants.

1. Access. The North Dakota health information network grants the rights to access the North Dakota health information network to participants and authorized users with a legitimate business need for purposes of treatment, obtaining payment for treatment, health care operations, to comply with public health reporting requirements, and as required by law.

2. Participant agreement requirement. Participants must execute a participation agreement with the North Dakota health information network prior to being granted access. Access and use of the North Dakota health information network is nontransferable by the participant.

3. Responsibilities. Participants shall identify all of its authorized users in accordance with the North Dakota health information network policies and procedures. The North Dakota health information network shall establish a unique identifier for each authorized user.

   a. Access to an individual's protected health information shall be based on the authorized user's job function and relationship to the individual according to policies and procedures established by the North Dakota health information network.

   b. Participants shall notify the North Dakota health information network within twenty-four hours of any authorized user who by reason of termination of employment or otherwise is removed as an authorized user.

   c. Participants shall provide training for all of its authorized users consistent with the participant's and North Dakota health information network policies, including privacy and security requirements.

   d. The participant may suspend, limit, or revoke the access authority of an authorized user on its own initiative upon a determination that the authorized user has not complied with the participant's or the North Dakota health information network policies. The participant shall be responsible for informing the North Dakota health information network immediately, and in any case within twenty-four hours, of any revocation or suspension.

4. Notification of breach. If an actual or suspected breach relates to the North Dakota health information network, participants shall notify the North Dakota health information network in the most expedient time possible and without unreasonable delay following discovery but no later than established policies of the North Dakota health information network and pursuant to 45 CFR 164, subpart D.

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 23-12-19, 54-59-25, 54-59-26, 54-59-28, 54-59-29

113-02-01-05. Use and disclosure of protected health information.

1. Approved uses and disclosures. A participant may use and disclose the protected health information accessible in the North Dakota health information network only for the following purposes:

a. Treatment, payment, and health care operations;

b. Permitted uses described in the participation agreement;

c. As allowed under 45 CFR parts 160 and 164; and

d. As required by law.

2. Prohibited uses and disclosures. An individual's protected health information may not be used without the individual's authorization by the North Dakota health information network, a participant, or a business associate for any of the following purposes:

a. Uses prohibited by law, including federal, state, or local laws, rules, or regulations;

b. Comparative studies or by third parties; or

c. The sale or commercial use of protected health information.

3. Audits. The North Dakota health information network is responsible for auditing the use of the health information network.

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 23-12-19, 54-59-25, 54-59-26, 54-59-28, 54-59-29

113-02-01-06. Fees. Reserved

113-02-01-07. Enforcement.

1. The health information technology director may suspend or terminate the participation in the North Dakota health information network of any participant or authorized user.

2. The health information technology director, or designee, may provide written notice of suspension of a participant's access to the North Dakota health information network to all participants and may provide a written summary of the reasons for the suspension to the suspended participant. The participant may follow the necessary provisions for the appeal mechanisms of the North Dakota health information network policies and procedures by responding to the suspension with a plan of correction or an objection to the suspension. The health information technology director shall review and either accept or reject the plan of correction.

a. If the plan of correction is accepted, the health information technology director shall, upon completion of the plan of correction,

reinstate the participant's access to the North Dakota health information network.

b. If the plan of correction is rejected, the participant may appeal the health information technology director's decision to the health information technology advisory committee for a final determination.

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 23-12-19, 54-59-25, 54-59-26, 54-59-28, 54-59-29

113-02-01-08. Privacy and security protections. Appropriate safeguards must be used to prevent use or disclosure of protected health information other than permitted by the North Dakota health information network policies, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of protected health information through the North Dakota health information network.

1. At a minimum, appropriate safeguards shall be those identified in 45 CFR part 164, subpart C; and other applicable federal and state standards.

2. The North Dakota health information network shall report to a participant any successful unauthorized access, use, disclosure, modification, or destruction of a participant's electronic protected health information of which the North Dakota health information network is aware.

History: Effective January 1, 2014.
General Authority: NDCC 54-59-26
Law Implemented: NDCC 23-12-19, 54-59-25, 54-59-26, 54-59-28, 54-59-29