

**NORTH DAKOTA ADMINISTRATIVE CODE**

Supplements 233 through 241

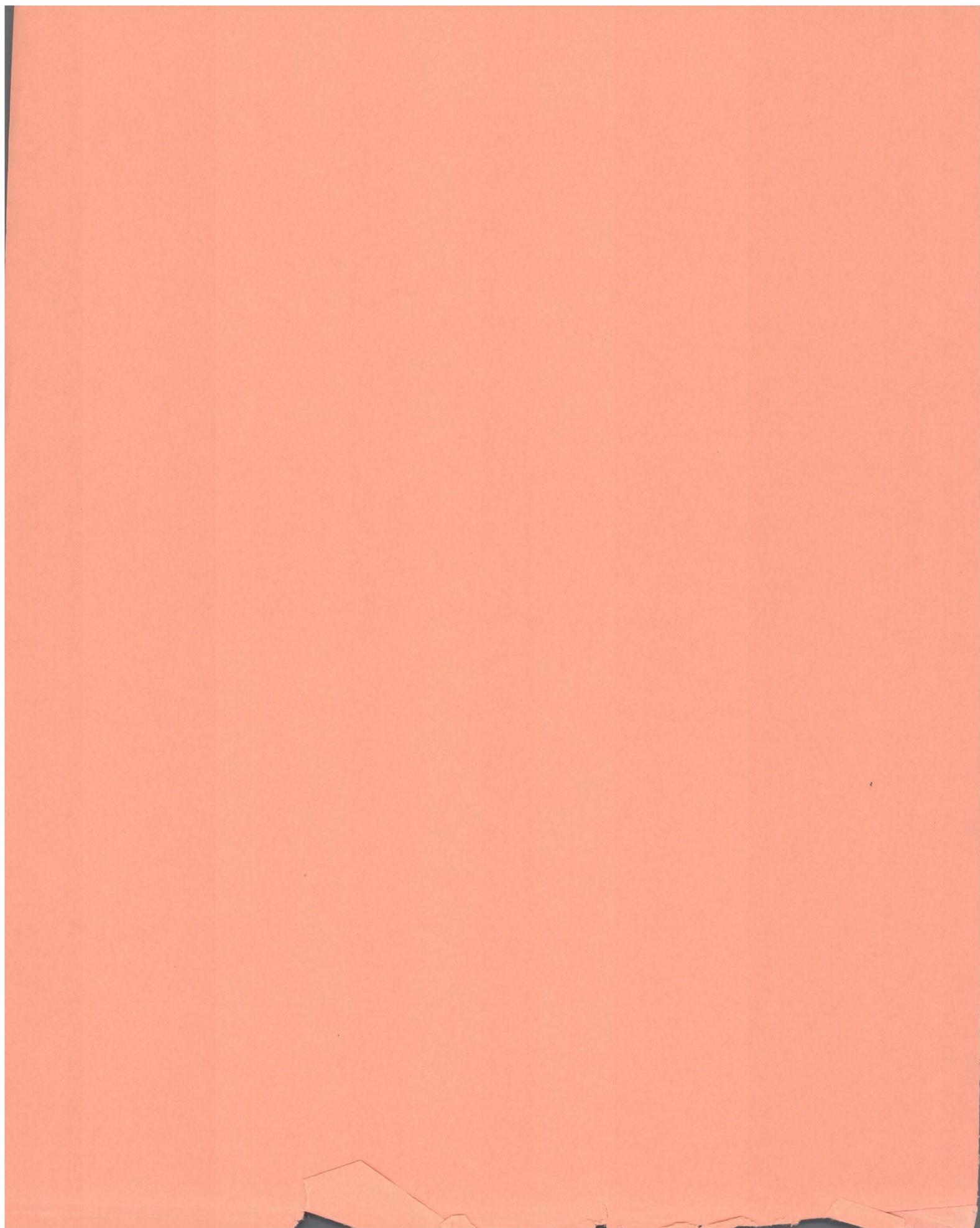
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**TITLE 13**

**Banking and Financial Institutions, Department of**



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DECEMBER 1998

CHAPTER 13-02-09

**13-02-09-02. Definitions.** In determining the total direct, indirect, or contingent liability of a borrower for purposes of North Dakota Century Code section 6-03-59, the following definitions apply:

1. "Contingent liability" includes a potential economic obligation of an enterprise if ~~it is~~-(a);
  - a. It is probable that a liability will be incurred; and (b) ~~the~~
  - b. The amount of the liability can be reasonably estimated.
2. "Corporation" means any entity organized and incorporated under law, including a limited liability company.
3. "Direct liability" means all obligations of an enterprise for which it has primary responsibility for repayment.
- 3- 4. "Indirect liability" includes a potential economic obligation of an enterprise if ~~it is~~-(a);
  - a. It is probable that a liability will be incurred; and (b) ~~the~~
  - b. The amount of the liability can be reasonably estimated.
5. "Limited partnership" means a partnership formed by two or more persons having one or more general partners and one or more limited partners, and includes a limited liability partnership.

- 4- 6. "Parent corporation" means a corporation which owns or controls one or more subsidiaries.
- 5- 7. "Probable" means that a future event or events that would cause a contingency to become a liability are likely to occur.
- 6- 8. "Subsidiary" means a corporation which is owned or controlled by a parent corporation.

**History:** Effective September 1, 1986; amended effective December 1, 1998.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59

### **13-02-09-03. Liabilities of a borrower.**

- 1. Standby letters of credit must always be included in determining the total direct, indirect, or contingent liability of a borrower who is a beneficiary of the standby letter of credit.
- 2. The obligations of a general partnership must always be included in determining the total direct, indirect, or contingent liability of each general partner of the partnership.
- 3. The obligations of a limited partnership must always be included, to the extent of each limited partner's share of ownership of the limited partnership, in determining the total direct, indirect, or contingent liability of each limited partner of the limited partnership, if one of the conditions of subsection 4 of section 13-02-09-04 exists. The entire obligation of a limited partnership must always be included in determining the total direct, indirect, or contingent liability of the general partner of a limited partnership.
- 4. An extension of credit to a borrower which is participated in by the banking association to a third party with recourse must always be included in determining the total direct, indirect, or contingent liability of that borrower.
- 5. If an extension of credit ~~or loan~~ is secured by a pledged certificate of deposit drawn on the lending bank and payable to the borrower, the face value of the certificate of deposit or the borrower's obligation secured by the certificate of deposit, whichever is less, may not be considered in determining the total liability of a borrower.
- 6. If an extension of credit which is transferred by the banking association to a third party without recourse fails to comply with applicable call report instructions to be treated as a sale, the extension of credit must be considered in

determining the total direct, indirect, or contingent liability of that borrower. Transfers that do not meet the conditions for sale treatment must be accounted for according to prevailing call report instructions.

**History:** Effective September 1, 1986; amended effective December 1, 1998.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59

**13-02-09-05. Loans to members of a partnership or association.** Where persons are engaged in a common enterprise, whether in the form of a partnership, joint venture, or other association, and individually ~~borrow~~ borrowed funds which are to be used in that enterprise, the loans must be considered as a single extension of credit, unless the bank has established that the enterprise is not the source of repayment.

**History:** Effective September 1, 1986; amended effective December 1, 1998.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59



**JANUARY 1999**

**CHAPTER 13-02-05**

13-02-05-05.1. Joint federal and state publication. Notwithstanding sections 13-02-05-05 and 13-02-05-06, an applicant may elect to publish joint federal and state notice of the application pursuant to the procedural requirements of federal law. Before publication, the applicant shall submit the proposed notice of application to the commissioner for prior approval.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 6-01-04, 6-03-13.1

**Law Implemented:** NDCC 6-03-13.1

**CHAPTER 13-02-13**

13-02-13-03.1. Joint federal and state publication. Notwithstanding section 13-02-13-03, an applicant may elect to publish joint federal and state notice of the application pursuant to the procedural requirements of federal law. Before publication, the applicant shall submit the proposed notice of application to the commissioner for prior approval.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 6-01-04, 6-03-11

**Law Implemented:** NDCC 6-03-11

CHAPTER 13-02-16

13-02-16-04.1. Joint federal and state publication.  
Notwithstanding section 13-02-16-04, an applicant may elect to publish joint federal and state notice of the application pursuant to the procedural requirements of federal law. Before publication, the applicant shall submit the proposed notice of application to the commissioner for prior approval.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 6-01-04, 6-03-02(12)

**Law Implemented:** NDCC 6-03-02(12), 6-05-01



**TITLE 24**  
**Electrical Board**



NOVEMBER 1998

CHAPTER 24-02-01

**24-02-01-01. Definitions.** The terms used throughout this chapter have the same meaning as in the National Electrical Code except:

1. "Correction order" means a notice, written by an electrical inspector to the person responsible for the electrical installation, stating violations and noncompliance of rules and regulations as listed, must be corrected within a designated time.
2. ~~"Mobile-home-plot" means a designated portion of a mobile-home park designed for the accommodation of one mobile-home and its accessory buildings or structures for the exclusive use of its occupants.~~
3. ~~"Mobile-home-park" means any plot of ground intended to accommodate three or more mobile-homes.~~
4. ~~"Recreational-vehicle-plot" means an area in a recreational park intended for the connection of one recreational-vehicle.~~
5. "Recreational vehicle park site" means any plot of ground ~~designed or intended to accommodate three or more~~ for the connection of recreational vehicles.
- 6- 3. "Wiring certificate" means a document consisting of one or more copies certifying that certain electrical wiring and equipment was installed in conformity with the rules and regulations of the electrical board.

**History:** Amended effective January 1, 1999.

General Authority: NDCC 43-09-05  
Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-02. General statement of policy and interpretative rules. There are three categories of licensed electricians recognized by the electrical board.

1. Licensed electricians and the qualifications required for each to apply for examination:
  - a. A master electrician must have at least one year's experience working as a licensed journeyman electrician under the supervision of a contracting master electrician.
  - b. A journeyman electrician must have at least four years' experience registered as an apprentice electrician (of which up to eighteen months may apply under the qualifications of a class B electrician) under the supervision of a contracting master licensed electrician in an area where electrical construction work is done in the jurisdiction regulating similar rules of the state of North Dakota. One year's credit will be granted for a graduate of a two-year electrical school approved by the state electrical board. The person must have the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations of the National Electrical Code.
  - c. A class B electrician must have at least eighteen months' experience in farmstead or residential wiring under the supervision of a master or class B electrician. Commercial wiring experience will not be credited for experience toward a class B license. Six months' credit will be granted for a graduate of a two-year electrical school approved by the state electrical board.
2. Apprentice electricians. There are two categories of apprentice electricians.
  - a. Apprentice electricians under the joint apprenticeship training committee training program approved by the department of labor.
  - b. Electrician trainees who may not be eligible for the joint apprenticeship training committee program and other persons desiring to accumulate a sufficient time and capability in the electrical trade to qualify them to apply for permission to take the examination for the journeyman electrician's license. Licensed electrician may supervise not more than three apprentices.

Any person may work as an apprentice under a licensed master or class B electrician, but the master or class B electrician may not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite. A licensed electrician may supervise not more than three apprentices.

Electrical contractors shall maintain records of all employees who are or will be performing electrical work for that electrical contractor and shall permit the electrical board to examine and copy all such records as required by this section.

Any master or class B electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative, shall subject his that person's license to nonrenewal, suspension, or revocation by the board.

2- 3. Master and class B electricians. A master or class B electrician may exercise his that person's privileges as a licensed master or class B electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07.

3- 4. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and ~~their~~ building contents, from electrical hazards arising from the use or control of electricity for light, heat, and power, and control thereof and of the fire detection system. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, railroad right of way and, also the conductors that supply streetlighting, ~~together~~ with the associated equipment necessary to its safe operation.

These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

All requirements contained herein must be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the 1996 1999 edition, National Electrical Code and, the 1994 1997 edition, Life Safety Code NFPA no. 101, and applicable articles in

currently adopted state uniform building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors, the more restrictive requirements shall be the minimum.

- 4: 5. Administrative powers and duties. The executive director of the North Dakota state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the 1996 1999 edition, National Electrical Code, and the 1994 1997 edition, Life Safety Code NFPA no. 101, and applicable articles in currently adopted state uniform building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors. In all cases where any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the 1996 1999 edition, National Electrical Code, and the 1994 1997 edition, Life Safety Code NFPA no. 101, such acts must be done in the name of and on behalf of the state and ~~the executive director, in so acting for the state, shall not render the executive director liable for any damages that may accrue to persons or property as a result of any such act committed in good faith in the discharge of the executive director's duties, and any suit brought against the executive director by reason thereof, must be defended by the state until final termination of proceedings contained therein.~~

The electrical regulations of these standards, the 1996 1999 edition, National Electrical Code, and the 1994 1997 edition, Life Safety Code NFPA no. 101, may be modified or waived by special permission in particular cases where such modification or waiver is specifically permitted or in particular cases where an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" must, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

~~The executive director or the electrical inspector shall have the power to enter any building or premises at any reasonable hour in the discharge of their duties, and it shall be competent for them, when necessary, to remove any existing obstructions such as laths, plastering, boarding, or partitions, which may prevent an inspection of electrical wiring and equipment; they shall also have the power to enter any building used in whole or in part for the purpose of public assemblage at any time when occupied by the public in order to examine electrical wiring and equipment in such building, and it shall be unlawful for any person to interfere with them in the performance of their duties.~~

Whenever the board is authorized or mandated by law to inspect an electrical installation, the inspector has authority to enter upon land for the purpose of conducting the inspection. Except in emergency circumstances, the inspector shall request permission from the property

owner or agent prior to entering a dwelling, other building, or other place so enclosed as manifestly to exclude intruders. If the landowner refuses to give permission, the board may request the district court of the district containing the property for an order authorizing the inspector to enter the property to conduct the inspection. Emergency circumstances include situations presenting imminent danger to health, safety, or property.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-03. General requirements.** Electrical installations must be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop may not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads. (See appendix for example.)
2. All wiring materials must be listed by underwriters' laboratories, incorporated, or other accepted testing laboratories to safeguard life and property. It is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards.
3. All installations must be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors must be rigidly supported and all fittings securely fastened.
4. When wiring public school buildings, approval must be received from the department of public instruction and the state electrical board.
5. Overhead conductors may not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions must be maintained for overhead conductors.
6. Hospitals I type and E-1 and E-2 type occupancies as defined in the Uniform Building Code, 1997 edition, to include hospitals, nursing homes, homes--for--the--aged basic care facilities, and all dormitories designed to house more than sixteen people must be wired in metal raceway. Portable cleaning equipment receptacle outlets must be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five

feet [7.62 meters] from an outlet. Spacing of receptacle outlets for dormitories and ~~homes--for--the--elderly~~ assisted living must be in conformity with section ~~210-52(a)~~, 1996 210-60, 1999 edition, National Electrical Code.

~~Exception:--By--special--permission--from--the--state--electrical board;--receptacles--in--dormitories--and--homes--for--the--elderly may--be--located--conveniently--for--the--permanent--fixture--layout.~~

7. In the wiring of nursing homes and hospitals, reference must be made to the state department of health and ~~consolidated laboratories~~ for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
8. Aluminum conductors in sizes smaller than no. 6 may not be used. Aluminum conductors installed and all corresponding materials must be underwriters' laboratories listed or other state-recognized testing laboratories. ~~All--materials--used must--be--installed--according--to--the--requirements--of--the National--Electrical--Code.--Connections--must--be--made--with--the type--approved--for--aluminum.--Consideration--must--be--given--to the--use--of--different--types--of--metal.~~

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-04. Places of assembly.** This section covers all buildings, structures, or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include, ~~but--are--not--limited--to:~~ assembly halls, auditoriums, including auditoriums in schools; mercantile, business and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to such other occupancy, must be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or portions thereof contain a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area must comply with all applicable provisions of article 520, 1996 1999 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16.)

1. **Hazardous (classified) locations.** Hazardous areas located in any assemblage occupancy must be installed in accordance with article 500, 1996 1999 edition, National Electrical Code, hazardous locations.
2. **Temporary wiring.** In exhibition halls used for display booths, as in trade shows, the temporary wiring must be installed in accordance with article 305, 1996 edition, National Electrical Code temporary wiring, except approved portable cables and cords shall be permitted to be laid on floors where protected from contact by the general public.
3. **Wiring methods.** The fixed wiring method must be metal raceway or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Adjacent areas separated by a firewall must be considered a separate building and may be wired in any approved wiring method in chapter 3 of the National Electrical Code. (For the purpose of this section, a firewall is defined as a wall with a two-hour fire rating. The wall shall start at the foundation and extend continuously through all floors to the roof.

Exception 1: As provided in article 640, 1996 1999 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, 1996 1999 edition, National Electrical Code, communication circuits, and in article 725, 1996 1999 edition, National Electrical Code, for class 1, class 2, and class 3 remote control and signaling circuits; and in article 760, 1996 1999 edition, National Electrical Code, for fire protective signaling systems.

Exception 2: Listed two-hour fire-rated cables as permitted in article 695-3c and article 700-9, 1999 edition, National Electrical Code.

Adjacent areas separated by a fire barrier must be considered a separate building and may be wired in any approved wiring method in chapter 3 of the National Electrical Code. For the purpose of this section, a fire barrier is defined as a continuous assembly, vertical or horizontal, in accordance with current state-adopted uniform building code. In no case may it be less than two-hour fire-rated.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

24-02-01-05. Hazardous locations.

1. Oilfield installations must be classified in accordance with the following American petroleum institute publications:
  - a. Recommended practice for classification of locations for electrical installations at drilling rigs and production facilities on land and on marine fixed and mobile platforms. 500B, third edition, October 1, 1987.
  - b. Classification of locations for electrical installations in petroleum refineries. 500A, fourth edition, December 1987.
  - c. Classification of locations for electrical installations at pipeline transportation facilities. 500C, second edition, July 1984. Hazardous locations must be wired in accordance with articles 500-516. For classifications of oilfield installations refer to RP 500, Classification of Locations for Electrical Installations at Petroleum Facilities, first edition, June 1, 1991.
2. Electrical wiring in grain elevators must conform with code requirements, class II, division 1, under article 500, 1996 1999 edition, National Electrical Code. All enclosures and electrical equipment mounted in rooms containing grinders, cleaners, roller mills, hoppers, open conveyors or spouts, mixers, and other dust-producing machinery must be labeled and approved for class II, division 1 location, including motor controllers of the type in which starting and running contractors are oil immersed. General purpose enclosures may only be installed in dust-free locations.
  - a. Surge protective capacitors arrestors must be provided for all services in grain elevators receiving power from an exterior overhead line. Surge protective capacitors may be located inside or outside a building. If located within a building, each capacitor must be protected with a fuse of proper voltage rating for the circuit and an ampere rating not less than twenty nor more than thirty amperes.
  - b. Where necessary to employ flexible connections in grain elevators, dusttight flexible connectors and conduit must be used.
  - c. Receptacles and switches installed in grain elevators must be labeled and approved for a class II, division 1 dusty location.
  - d. Electrical wiring and equipment installed in a grain elevator which is not used commercially and having a total capacity of less than ten thousand bushels {352.39 cubic

meters]--and-located-in-a-rural-district-must--conform--to class--II;--division--2;--under-article-500;--1996-edition; National-Electrical-Code.

e.--Electrical--wiring--and--equipment--in--buildings-or-rooms other-than-a-grain-elevator--where--grain--is--handled--or processed--on--a-commercial-basis-such-as-rooms-containing grinders;--augers;--open-spouts;--roller-mills;--or--similar dust-producing-machinery;--must-be-labeled-and-approved-for class-II;--division-1;--under--article--500;--1996--edition; National-Electrical-Code.

f.--In--buildings-or-rooms-where-grain-is-handled-or-processed not-on--a--commercial--basis;--such--as--rooms--containing grinders;--augers;--open--spouts;--roller-mills;--or-similar dust-producing-machinery;--the--electrical--wiring--and equipment--must--conform--to--class--II;--division-2;--under article-500;--1996-edition;--National-Electrical-Code.

Exceptions:--Rooms--where--grain--is--handled--or--processed occasionally-on-a-limited-basis;--general-purpose-equipment may-be-used-if-approved-by-the-local-inspection-authority; Hot bearing or other similar detection systems must be installed in accordance with articles 500-516, 1999 edition, National Electrical Code.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-06. Grounding.** Grounding must conform to article 250, 1996 1999 edition, National Electrical Code.

1. The--equipment-grounding-conductor-must-be-spliced-in-the-same manner-as-branch-circuit-conductors-except-that-solder-may-not be-used.
- 2.--The--neutral--conductor--may--not--be--used--as--the-equipment grounding-conductor-and-must-be-insulated-except--as--provided in-section-250-60;--1996-edition;--National-Electrical-Code.
- 3.--All--metal--boxes-in-structures-containing-metal-lath;--tin-foil insulation;--or--other-metallic-barrier-must-be-grounded.
4. At motor connections, a bonding jumper sized in accordance with table 250-95;--1996 250-122, 1999 edition, National Electrical Code, must be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.

5- 2. Grounding of metal lighting standards. Definition of lighting standard is a pole exceeding twelve feet [3.66 meters] in height measured from the bottom of the base or from the intended grade level of poles.

a. Circuits run in nonmetallic conduit or buried directly in the ground: the ~~ornamental~~ metal lighting standard must be grounded by use of a an equipment grounding conductor, not the neutral conductor. This equipment grounding conductor must be run continuously throughout the system and properly bonded to each standard by use of lugs. It

b. The metal lighting standard must be connected to a one-half inch [12.70 millimeters] by ten-foot [3.05-meter] copperweld ground rod at each metal standard by the means of a bonding jumper. The ten-foot ~~[3.0-meter]~~ [3.05-meter] ground rod ~~is~~ must be driven in the center of the metal standard base and ~~projecting~~ project slightly above the base. Both ground rod and equipment grounding conductor must be connected to the metal standards. The grounding-conductor bonding jumper must be in accordance with the ~~1996~~ 1999 edition, National Electrical Code and in no case smaller than no. 8 copper or no. 6 aluminum.

b. ~~Because of different characteristics of copper and aluminum, devices such as pressure terminal or pressure splicing connectors and soldering lugs must be suitable for the material of the conductor and must be properly installed and used. Conductors of dissimilar metals may not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum), unless the device is suitable for the purpose and conditions of use. Consideration must also be given to dissimilar metals when grounding aluminum light standards.~~

e. ~~When circuits are run in metal conduit the ornamental metal lighting standard must be grounded to the metal conduit. No ground rod is required.~~

6- 3. The grounding electrode conductor must be connected to the grounded service conductor in the enclosure for the service disconnect.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-07. Branch circuits and feeders.** Branch circuits and feeders must comply with articles 210 and 215, 1996 1999 edition, National Electrical Code.

1. The total connected load must be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye (~~120-208-volts~~) system.
2. A separate circuit with disconnect must be provided for the purpose of operating or controlling electrical equipment on heating ~~plants~~ units. Wiring requirements for fixed electrical space heating equipment is provided under article 424, 1996 1999 edition, National Electrical Code.
3. Dwelling occupancies having built-in baking or cooking units installed separately must have an individual disconnect and overcurrent protective device. Conductors supplying these units must have a carrying capacity according to nameplate rating.
4. A minimum of six 20-amp small appliance branch circuits must be installed in kitchens that may be used to serve public gatherings ~~such--as~~ at schools, churches, lodges, ~~ete~~ and similar buildings.
5. Dwelling type occupancies. ~~Receptacle--outlets--must--be installed in accordance with--section--210-52;--1996--edition; National-Electrical-Code:~~
  - a. ~~Lighting--outlets--in--dwelling--type--occupancies--must--be installed in accordance with section 210-70;--1996--edition; National-Electrical-Code:~~
  - b. A minimum of three 20-amp small appliance branch circuits must be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits may not supply other outlets and must have conductors not smaller than no. 12. ~~Such-circuits--must--be--provided--with overcurrent-devices-rated-at-twenty-amperes--and--must--be known--as--appliance-circuits:~~ Two of these circuits must supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
  - c. ~~In--laundry--at--least--one--20-ampere--branch--circuit--must--be provided to supply laundry receptacles.--See--exceptions-1 and--2;--section--210-52(f);--and--220-4(c);--1996--edition; National-Electrical-Code:~~
  - d. ~~Ground-fault--protection--for--personnel--must--comply--with section-210-8;--1996--edition;--National-Electrical-Code:~~

6.--Branch--circuit--and--feeder--calculations--must--comply--with  
article-220,-1996-edition,-National-Electrical-Code---Voltage  
drop--must--be--taken-into-consideration-when-figuring-size-of  
feeder-or-branch-circuit.

Formulas-for-determining-voltage-drop-or-conductor-size-are:

$$\text{Voltage drop} = \frac{21.6 \times L \times I}{C.M.A.}$$

or

$$C.M.A. = \frac{21.6 \times L \times I}{\% \text{ drop} \times \text{voltage}}$$

L--length-in-ft.,-one-way

I--load-in-amps

E--volts

C.M.A.--Circular-mil-area-21.6-multiplying  
factor-for-copper-35-multiplying  
factor-for-aluminum

Percent-drop--permissible-voltage-drop-times  
voltage-of-circuit-as-follows:

3%-of-208--208-X-.03--6.24-volts

3%-of-120--120-X-.03--3.6-volts

3%-of-240--240-X-.03--7.2-volts

5%-of-240--240-X-.05--12.0-volts

Example:

240-volts,-1,000-ft.-distance,-10-ampere  
load,-5%-drop

$21.6 \times 1,000 = 21,600 \div 10 = 216,000$

216,000-divided-by-26,250-(C.M.A.-of-No.-6)--  
8.2-volts-(less-than-5%)

216,000-divided-by-16,510-(C.M.A.-of-No.-8)--  
13-volts-(more-than-5%)

120-volts,-8-ampere-load,-100-ft.-distance,  
3%-drop

$21.6 \times 100 = 2,160 \div 8 = 17,280$

17,280-divided-by-6,530-(C.M.A.-of-No.-12)--  
2.64-volts-(less-than-3%)

17,280-divided-by-4,107-(C.M.A.-of-No.-14)--  
4.2-volts-(more-than-3%)

or

$21.6 \times 8 \text{ amps} \times 100 \text{ ft.} = 17,280$

17,280-divided-by-3.6-(volts-representing-3%)--  
5,008-C.M.A.--(No.-12)

For-3-phase-circuits,-use-formula,-then  
multiply-the-results-by-.86 (See appendix for

examples.)

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-08. Services.** Electrical services must comply with article 230, 1996 1999 edition, National Electrical Code.

1. In general, the point of attachment of a service drop to a building must be not less than ten feet [3.0 meters] above the ground and must be at a height to permit a minimum clearance of service conductors of ten feet [3.0 meters] above walks and eighteen feet [5.48 meters] above driveways or public roads. Where the form of the building will not permit placing the attachment ten feet [3.0 meters] or more above the ground, a mast or other suitable means must be used to obtain the ten feet [3.0 meters] clearance.
2. Perpendicular mast used for support of a service drop to low buildings must be not be less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit fitted with storm collar flashing and offset reducer if needed, at the lower end to accommodate a meter socket.
3. A span of one hundred ten feet [43.48 meters] must be considered a maximum distance for a one hundred amp service drop to a mast unless the mast is substantially guyed.
4. 2. To eliminate moisture condensation, service raceways must have provisions a suitable, pliable compound must be installed to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, 1996 1999 edition, National Electrical Code).
5. Where the service conduit enters a switch, cabinet, or trough through a knockout, the conduit must be bonded in accordance with section 250-71, 1996 edition, National Electrical Code.
6. 3. Switch location. A service switch or a manually operable circuit breaker must be provided for each set of service entrance conductors and located at a readily accessible point not more than six and one-half feet [1.98 meters] above the floor level and as near as possible to the entrance of the conductors either inside or outside the building or structure. If outside, this equipment must be approved for outside location. In no case may the equipment be mounted lower than two feet [0.6096 meters] above grade level. Switch cabinets must be of the dead front type. All service equipment and panels to be mounted on inside or outside walls of buildings housing livestock must be mounted at least two inches [5.08 centimeters] away from such outside walls by means of a

substantial backboard or frame. It is recommended that the service entrance switch in residences be located in the basement or on the first floor. In no case may overcurrent devices be located in bathrooms, clothes closets, stairways, or crawl space. Overcurrent devices may not be located in bathrooms, clothes closets, stairways, or crawl space.

a. Outside switch location. In no case may the equipment be mounted lower than two feet [.6096 meters] above grade level.

b. All services in one-family and two-family dwellings must be located in a single accessible location.

Exception: Special permission may be granted by the electrical inspector for a second service location to be added where there is no available space for the service equipment. The second service location must be installed in accordance with article 230-2, 1999 edition, National Electrical Code.

7- 4. Rating of service switch. Any new or old dwelling where service is altered, the dwelling is moved, or where the dwelling is rewired, a minimum one hundred amp service and rated ampere service-rated panel must be installed.

a. A one hundred ampere service must be installed using conductors rated at one hundred amperes. The panel must contain provisions for four double-pole two-hundred forty volt three-wire circuits, one of which may be used as a disconnect for not less than ten 2-wire one-hundred twenty volt circuits for minimum twenty branch circuit spaces.

b. A pole-top disconnecting means in rural areas is mandatory on all overhead pole-top meter installations. Disconnect switches with an overcurrent protective device is optional to the supplier of electric current. A two hundred ampere or larger service must be installed using conductors rated at two hundred amperes. The panel must contain provisions for minimum forty branch circuit spaces.

c. Where a single stack service is used on a yard pole, it must be considered only as a meter loop and the load conductor must be treated as service conductors to buildings. Service calculation for electric heating loads must be sized to one hundred twenty-five percent of the full load rating.

8- Clearance from ground. Conductors must have a clearance of not less than ten feet {3.0 meters} from the ground or from any platform or projection from which they might be reached. See section 225-18, 1996 edition, National Electrical Code.

9. Clearances from buildings for conductors not over six hundred volts. See section 225-19, 1996 edition, National Electrical Code. Conductors must have a clearance of not less than thirty-six inches [.914 meters] from windows, doors, porches, fire escapes, or similar locations. Conductors run above the top level of a window are considered out of reach from that window.

10. 5. Underground services. Underground service must comply with article 230, part B C, 1996 1999 edition, National Electrical Code.

a. Cables or individual conductors on outside of buildings or poles must be protected where subject to mechanical injury. Where rigid metal conduit is used, a bushing must be used on both ends. Sufficient slack conductor must be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meters]. Where conduit is used on a pole to protect such conductors, it must comply with the 1996 1999 edition of the National Electrical Code. Metal conduit protecting underground conductors on a pole or building must be grounded.

b. Underground service conductors must be protected against physical damage in accordance with section 300-5, 1996 edition, National Electrical Code.

11. High-voltage installations over six hundred volts. All wiring installations containing circuits and equipment operated at more than six hundred volts must comply with article 710, 1996 edition, National Electrical Code, along with the following requirements:

a. All ducts, pull boxes, junction boxes, and equipment must be clearly marked with signs having white background and red lettering by the word "DANGER" and value of operating voltage.

b. All wiring and equipment must be bonded and grounded as per article 250, 1996 edition, National Electrical Code.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-09. Overcurrent protection.** Overcurrent protection must comply with article 240, 1996 1999 edition, National Electrical Code.

1. ~~Weatherproof sockets, pigtail sockets, or lampholders may not be considered as cutout bases for plug fuses.~~
2. ~~Overcurrent~~ Exterior overcurrent devices must be located at a height of no ~~less than eighteen inches [45.72 centimeters]~~ two feet [.6096 meters] above grade level.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-10. Wiring methods.** ~~Nonmetallic-sheathed-cable-type-NM, NM, and UF must be supported at intervals not to exceed three feet [0.914 meters] for two-conductor cable and four feet [1.21 meters] for three-conductor cable and within twelve inches [30.48 centimeters] from each cabinet, box, or fitting. For additional installation requirements, see articles 336 or 339, 1996 edition, National Electrical Code.~~

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical wiring devices and equipment must be installed in accordance with the provisions of article 547, 1996 1999 edition, National Electrical Code.
2. Electric metallic tubing may not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. (A vapor barrier, if used, will have no affect effect on the requirements of the section.) Electric metallic tubing may not be embedded in earth or fill.
3. Aluminum conduit may not be installed in contact with earth or embedded in concrete.
4. ~~Rigid metal conduit may be used under all atmospheric conditions and occupancies, except that ferrous raceways and fittings protected from corrosion solely by enamel may be used only indoors and in occupancies not subject to severe corrosive influences. Conduits and fittings exposed to severe corrosive influences must be of corrosion-resistant material suitable for the conditions. Where practicable, the use of dissimilar metals throughout the system must be avoided to eliminate the possibility of galvanic action.~~
5. The installation of rigid nonmetallic conduit must comply with the provision of article 347, 1996 1999 edition, National Electrical Code. Expansion fittings for rigid nonmetallic conduit must be provided to compensate for thermal expansion and contraction in accordance with section 347-9, 1999 edition, National Electrical Code. When installed outdoors

and above grade, one hundred forty degrees Fahrenheit [60 degrees Celsius] must be considered the minimum change in degrees.

- 6- 5. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways may be used providing the raceway, boxes, and fittings are properly protected against corrosion. ~~Wherever rigid nonmetallic conduit is used as the wiring method, provisions must be made for expansion. (Approximately one inch [2.54 centimeters] of expansion per thirty feet [9.10 meters] of conduit per fifty degrees Fahrenheit [28 degrees Celsius] temperature change.)~~

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

24-02-01-10.1. Electrical equipment submerged in water. Electrical wiring and equipment exposed to water damage must comply with the following:

1. All breaker panelboards, breakers, fuses, disconnect switches, controllers, receptacles, switches, light fixtures, and electric heaters that have been submerged must be replaced.
2. All electrical equipment, switchgear, motor control centers, boilers and boiler controls, electric motors, transformers, and other similar equipment such as appliances, water heaters, dishwashers, ovens, and ranges that have been submerged must be reconditioned by the original manufacturer or by its approved representative or replaced.
3. Electrical wiring may require replacement depending on the type of wire or cable and what application it was listed for.
4. Splices and terminations must be checked to make sure they comply with article 110-14, 1999 edition, National Electrical Code.

Other recommendations can be found in "guidelines for handling water damaged electrical equipment" published by the national electrical manufacturers association (NEMA).

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-11. Motors, motor circuits, and controllers.** Section 430-1, 1996 edition, National Electrical Code, is a guide to general requirements:

1. For motor running protection, all three-phase motors must be provided with three running overcurrent units:

2. The motor branch circuit overcurrent device must be capable of carrying the starting current of the motor but may not exceed two hundred twenty-five percent of the full load current of the motor:

Exception: Where the two hundred twenty-five percent is not sufficient for starting the motor, a higher rating or setting overcurrent device may be used if approved by the state electrical board:

3. All other wiring for motors, motor circuits, and controllers must comply with article 430, 1996 edition, National Electrical Code. Repealed effective January 1, 1999.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996:

**General Authority:** NDCC-43-09-05

**Law Implemented:** NDCC-43-09-21, 43-09-22

**24-02-01-12. Boxes and fittings.** Boxes must be of sufficient size to provide free space for all conductors enclosed in the box in accordance with article 370, 1996 edition, National Electrical Code:

1. Not more than one extension ring may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction.

2. Except as provided for in article 604, 1996 edition, National Electrical Code, boxes Boxes or conduit bodies must be installed at each opening, splice, or connection, except as provided in article 604, 1999 edition, National Electrical Code.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-13. Seasonal dwellings.** Electrical wiring installation in all seasonal dwellings must comply with the North Dakota wiring standards and the 1996 edition, National Electrical Code, with the following exceptions:

1. Buildings without basements may be wired with a minimum of sixty-ampere service providing it is adequate for the load.
2. A minimum of two appliance circuits must be provided to supply outlets in kitchen, dining room, and breakfast room.
3. Receptacle outlets must be installed in accordance with section 210-52(a), 1996 edition, National Electrical Code. Repealed effective January 1, 1999.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

**General Authority:** NDEC-43-09-05

**Law Implemented:** NDEC-43-09-21; 43-09-22

#### 24-02-01-14. Mobile home parks and recreational vehicle parks.

The electrical wiring in mobile home parks must comply with part B, article 550, 1996 edition, National Electrical Code. Mobile home service equipment may not be mounted in or on the mobile home and must be located at a height of no less than two feet [609.6 meters] above finished grade level.

1. The electrical wiring in recreational vehicle parks must comply with part B, article 551, 1996 edition, National Electrical Code. Lot service equipment must be located not less than two feet [608 meters] nor more than six and one-half feet [1.98 meters] above the ground.
2. Electrical enclosures located outdoors in mobile home parks or recreational vehicle parks that house bare bus bars or terminals must be provided with covers requiring a tool for removal of such covers. Overhead conductors must have a clearance above ground of not less than eighteen feet [5.48 meters] except in areas where it is impractical for movement of vehicles or mobile homes, the clearance above ground may not be less than twelve feet [3.66 meters]. Repealed effective January 1, 1999.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

**General Authority:** NDEC-43-09-05

**Law Implemented:** NDEC-43-09-21; 43-09-22

#### 24-02-01-15. Athletic field lighting.

All lighted athletic and sport fields supplied from a primary system must be provided with a fused disconnect switch on the primary side. The switch must have proper ratings with a lockable manual control handle. The installation of primary conductors installed underground must conform to section 24-02-01-08. The secondary conductors are considered service conductors. For installation of service conductors, see article 230, parts D, E, and F, 1996 edition, National Electrical Code. A main

disconnect--switch--on--the--secondary--side--is--optional.---A--disconnecting means--at--each--pole--or--tower--is--not--mandatory.---Branch--circuit--panel boards--having--a--rating--of--no--less--than--one--hundred--twenty--five--percent of--the--total--connected--load--must--be--provided--at--each--tower--or--pole.---The panel--may--be--located--at--the--top--of--pole--or--tower.---Conductors--supplying panel--must--be--calculated--on--the--basis--of--one--hundred--twenty--five--percent of--the--total--connected--load.---Wiring--installed--on--pole--or--tower--must--be in--raceway;--except;--for--flexibility--at--tamps;--approved--cable--assemblies will--be--permitted.---All--metal--towers--must--be--grounded--to--a--one--half--inch [12.7--millimeter]--by--ten--foot--[3.0--meter]--ground--rod.---The--grounded conductor--on--the--secondary--side--must--be--grounded--to--the--grounding electrode.---Metal--boxes;--raceways;--cabinets---and---fittings;---or noncurrent--carrying--metal--parts--of--other--fixed--electrical--equipment--must be--grounded--when--required.---(See--article--250;--1996--edition;--National Electrical--Code.) Repealed effective January 1, 1999.

**History:** Amended--effective--January--1;--1981;--January--1;--1984;--October--1; 1987;--January--1;--1990;--January--1;--1993;--February--1;--1996.

**General Authority:** NDEE-43-09-05

**Law Implemented:** NDEE-43-09-21;--43-09-22

**24-02-01-16.** Exit--marking Marking of means of egress, illumination of means of egress, and emergency lighting. The purpose of this section is to provide exit and emergency lighting requirements in accordance with Life Safety Code, NFPA 101, 1994 1997 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, 1994 1997 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially where federal funds are involved.

1. Exit--marking Marking of means of egress. All required exits and access to exits must be marked by readily visible signs with letters not less than six inches [15.24 centimeters] high and arrows indicating direction to exits. Every sign must be suitably illuminated. See section 5-10.3, Life Safety Code, NFPA 101, 1994 1997 edition.
2. Illumination of means of egress. Illumination of means of egress must provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorway, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. Illumination must be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking may also serve for illumination of means of egress and must be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.

3. **Emergency lighting.** Emergency lighting systems must be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress must be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.

4. **Classification-of-occupancy:**

**Assembly**

Theaters  
Motion-picture-theaters  
Assembly-halls  
Auditoriums  
Exhibition-halls  
Libraries  
Museums  
Skating-rinks  
Gymnasiums  
Bowling-lanes  
Poolrooms  
Armories  
Conference-rooms  
Restaurants  
Churches  
Dancehalls  
Clubrooms  
Passenger-stations-and-terminals-of  
air-surface,-underground,-and-marine  
public-transportation-facilities  
Recreation-piers  
Courtrooms  
Mortuary-chapels  
Drinking-establishments  
College-and-university-classrooms,  
fifty-persons-and-over

**Educational**

Schools-twelfth-grade-and-under  
Instructional-building---Business-occupancy  
Classrooms-under-fifty-persons---Business-occupancy  
Classrooms-fifty-persons-and-over---Place-of-assembly  
Laboratories,-instructional---Business-occupancy  
Laboratories,-Noninstructional---Industrial  
Day-care-facilities  
Academies  
Nursery-schools  
Kindergartens

Health-care

Health-care-facilities

Hospitals

Nursing-homes

Residential-custodial-care

Nurseries

Homes-for-the-aged

Mentally-retarded-care-institutions

Detention-and-correctional-occupancies

Residential-restrained-care

Penal-institutions

Reformatories

Jails

Detention-centers

Correctional-centers

Residential

Hotels

Motels

Apartments

Dormitories

Orphanages-for-age-six-years-and-older

Lodging-or-roominghouses

One-family-and-two-family-dwellings

Mercantile

Supermarkets

Department-stores

Shopping-centers

Drugstores

Auction-rooms

Business

Doctors'-offices

Dentists'-offices

City-halls

General-offices

Townhalls

Courthouses

Outpatient-clinics,-ambulatory

College-and-university---instructional

buildings,-classrooms-under-50-persons;

and-instructional-laboratories

Industrial

Factories-of-all-kinds

Laboratories

Drycleaning-plants

Power-plants

Pumping-stations

Smokehouses

Laundries

Creameries  
 Gas-plants  
 Refineries  
 Sawmills  
 College-and-university  
 Noninstructional-laboratories

Storage

Warehouses  
 Cold-storage  
 Freight-terminals  
 Truck-and-marine-terminals  
 Bulk-oil-storage  
 Parking-garages  
 Hangars  
 Grain-elevators  
 Barns  
 Stables

5.--Occupant-load-value-table.

Occupancy-----	Square-Feet-Per-Person
Places-of-assembly-----	15-net-*
Areas-of-concentrated-use	
without-fixed-seating-----	7-net
Waiting-space-----	3-net
Libraries:--In-stack-areas-----	100-net
In-reading-rooms-----	50-net
Mercantile-building,--street-floor	
and-sales-below-street-floor-----	30-gross-**
Upper-floors-----	60-gross
Mall	
Street-level-and-below-----	30-gross
Upper-floor-----	60-gross
Storage,--shipping-----	300-gross
Offices-only-----	100-gross
Educational-occupancies	
Classroom-area-----	20-net
Shops-and-other-vocational-areas-----	50-net
Day-nurseries-with-sleeping	
facilities-----	35-net
Business,--industrial-----	100-gross
Hotels,--motels,--apartments,--and	
dormitories-----	200-gross
Health-care	
Sleeping-departments-----	120-gross

Inpatient-departments-----240-gross

\*--Net--floor--area--is--the--actual--occupied--area,--not--including  
accessory-unoccupied-areas-or-thickness-of-walls:

\*\*--Gross--floor--area--is--the--floor--area--within--the--inside  
perimeter--of--the--outside--walls--of--the--building--under  
consideration--with--no--deduction--for--hallways,--stairs,--closets,  
thickness-of-interior-walls,--columns,--or--other-features:

Notes-to-occupant-load-table:

- (a)-An-assembly-area-of-concentrated-use  
without-fixed-seats-such-as-an-auditorium,  
church,--chapel,--dance-floor,--or-lodge-room--  
}seven-square-feet-[.65-square-meters]-per-person:
- (b)-An-assembly-area-of-less-concentrated  
use-such-as-a-conference-room,--dining-room,  
drinking-establishment,--exhibit-room,--gymnasium,  
or-lounge---fifteen-square-feet-[1.39-square-meters]  
per-person:
- (c)-Standing-room-or-waiting-space---three-square  
feet-[.28-square-meters]-per-person:
- (d)-Bleachers,--pews,--and-similar-bench-type  
seating---eighteen-linear-inches-[45.72-centimeters]  
per-person:

Classification of occupancy (based on chapter 4, Life Safety  
Code, NFPA 101, 1997 edition).

Assembly. Assembly occupancies include all buildings or  
portions of buildings used for gathering together fifty or  
more persons for such purposes as deliberation, worship,  
entertainment, eating, drinking, amusement, or awaiting  
transportation. Assembly occupancies also include special  
amusement buildings regardless of occupant load.

Assembly occupancies include the following:

<u>Armories</u>	<u>Mortuary chapels</u>
<u>Assembly halls</u>	<u>Motion picture theaters</u>
<u>Auditoriums</u>	<u>Museums</u>
<u>Bowling lanes</u>	<u>Passenger stations and</u>
<u>Clubrooms</u>	<u>terminals of air,</u>
<u>College and university</u>	<u>surface, underground,</u>
<u>classrooms, fifty</u>	<u>and marine public</u>
<u>persons and over</u>	<u>transportation facilities</u>
<u>Conference rooms</u>	<u>Places of religious</u>
<u>Courtrooms</u>	<u>worship</u>
<u>Dancehalls</u>	<u>Poolrooms</u>
<u>Drinking</u>	<u>Recreation piers</u>
<u>establishments</u>	<u>Restaurants</u>
<u>Exhibition halls</u>	<u>Skating rinks</u>
<u>Gymnasiums</u>	<u>Theaters</u>

## Libraries

Occupancy of any room or space for assembly purposes by fewer than fifty persons in a building or other occupancy and incidental to such other occupancy must be classified as part of the other occupancy and must be subject to the provisions applicable thereto.

Educational. Educational occupancies include all buildings or portions of buildings used for educational purposes through the twelfth grade by six or more persons for four or more hours per day or more than twelve hours per week.

Educational occupancies include the following:

<u>Academies</u>	<u>Nursery schools</u>
<u>Kindergartens</u>	<u>Schools</u>

Other occupancies associated with educational institutions must be in accordance with the appropriate part of Life Safety Code, NFPA 101, 1997 edition.

In cases where instruction is incidental to some other occupancy, the section of Life Safety Code, NFPA 101, 1997 edition, governing such other occupancy applies. For example:

Classrooms under fifty persons - business occupancy  
Classrooms fifty persons and over - assembly  
Instructional building - business occupancy  
Laboratories, instructional - business occupancy  
Laboratories, noninstructional - industrial

Health care. Health care occupancies are those used for purposes such as medical or other treatment or care of persons suffering from physical or mental illness, disease, or infirmity and for the care of infants, convalescents, or infirm aged persons. Health care occupancies provide sleeping facilities for four or more occupants and are occupied by persons who are mostly incapable of self-preservation because of age, physical or mental disability, or because of security measures not under the occupants' control.

Health care occupancies include the following:

<u>Hospitals</u>	<u>Nursing homes</u>
<u>Limited care facilities</u>	

Health care occupancies also include ambulatory health care centers.

Detention and correctional. Detention and correctional occupancies are used to house individuals under varied degrees of restraint or security and are occupied by persons who are

mostly incapable of self-preservation because of security measures not under the occupants' control.

Detention and correctional occupancies include the following:

Adult and juvenile substance abuse centers  
Adult and juvenile work camps  
Adult community residential centers  
Adult correctional institutions  
Adult local detention facilities  
Juvenile community residential centers  
Juvenile detention facilities  
Juvenile training schools

Residential. Residential occupancies are those occupancies in which sleeping accommodations are provided for normal residential purposes and include all buildings designed to provide sleeping accommodations.

Exception. Those classified under health care or detention and correctional occupancies.

Residential occupancies are treated separately in Life Safety Code, NFPA 101, 1997 edition, in the following groups:

Hotels, motels, and dormitories  
Apartment buildings  
Lodging or rooming houses  
One-family and two-family dwellings  
Board and care facilities

Mercantile. Mercantile occupancies include store, markets, and other rooms, buildings, or structures for the display and sale of merchandise.

Mercantile occupancies include the following:

Auction rooms                      Shopping centers  
Department stores              Supermarkets  
Drugstores

Office, storage, and service facilities incidental to the sale of merchandise and located in the same building are included with mercantile occupancy.

Business. Business occupancies are those used for the transaction of business (other than those covered under mercantile), for the keeping of accounts and records, and for similar purposes.

Business occupancies include the following:

Air traffic control                      Courthouses

<u>towers (ATCTs)</u>	<u>Dentists' offices</u>
<u>City halls</u>	<u>Doctors' offices</u>
<u>College and university</u>	<u>General offices</u>
<u>instructional</u>	<u>Outpatient clinics,</u>
<u>buildings, classrooms</u>	<u>ambulatory</u>
<u>under fifty persons,</u>	<u>Townhalls</u>
<u>and instructional</u>	
<u>laboratories</u>	

Doctors' and dentists' offices are included unless of such character as to be classified as ambulatory health care occupancies.

Industrial. Industrial occupancies include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing.

Industrial occupancies include the following:

<u>Drycleaning plants</u>	<u>Laundries</u>
<u>Factories of all kinds</u>	<u>Power plants</u>
<u>Food processing plants</u>	<u>Pumping stations</u>
<u>Gas plants</u>	<u>Refineries</u>
<u>Hangars (for servicing</u>	<u>Sawmills</u>
<u>or maintenance)</u>	<u>Telephone exchanges</u>

In evaluating the appropriate classification of laboratories, the authority having jurisdiction should determine each case individually based on the extent and nature of the associated hazards. Some laboratories may be classified as occupancies other than industrial, for example, a physical therapy laboratory or a computer laboratory.

Storage. Storage occupancies include all buildings or structures utilized primarily for the storage or sheltering of goods, merchandise, products, vehicles, or animals.

Storage occupancies include the following:

<u>Barns</u>	<u>Parking structures</u>
<u>Bulk oil storage</u>	<u>Stables</u>
<u>Cold storage</u>	<u>Truck and marine</u>
<u>Freight terminals</u>	<u>terminals</u>
<u>Grain elevators</u>	<u>Warehouses</u>
<u>Hangars (for storage</u>	
<u>only)</u>	

Storage occupancies are characterized by the presence of relatively small numbers of persons in proportion to the area. Any new use that increases the number of occupants to a figure comparable with other classes of occupancy changes the classification of the building to that of the new use.

Day care. Day care occupancies include all buildings or portions of buildings in which four or more clients receive care, maintenance, and supervision, by other than their relatives or legal guardians, for less than twenty-four hours per day.

Day care occupancies include the following:

<u>Child day care occupancies</u>	<u>Nursery schools</u>
<u>Adult day care occupancies, except where part of a health care occupancy</u>	<u>Day care homes</u>
	<u>Kindergarten classes that are incidental to a child day care occupancy</u>

In cases where public schools offer only half-day kindergarten programs, many child day care occupancies offer state-approved kindergarten classes for children who require full day care. As these classes are normally incidental to the day care occupancy, the requirements of the day care occupancy should be followed.

Mixed occupancies. Where two or more classes of occupancy occur in the same building or structure and are intermingled so that separate safeguards are impracticable, means of egress facilities, construction, protection, and other safeguards must comply with the most restrictive life safety requirements of the occupancies involved.

5. Occupant load value table.

<u>Occupancy</u>	<u>Square Feet Per Person</u>
<u>Assembly</u>	<u>15 net *</u>
<u>Areas of concentrated use without fixed seating</u>	<u>7 net</u>
<u>Waiting space</u>	<u>3 net</u>
<u>Bleachers, pews, and similar bench-type seating</u>	<u>Note 1</u>
<u>Fixed seating</u>	<u>Note 2</u>
<u>Kitchens</u>	<u>100 gross**</u>
<u>Libraries: In stack areas</u>	<u>100 gross</u>
<u>                    In reading rooms</u>	<u>50 net</u>
<u>Swimming pools: Water surface</u>	<u>50 gross</u>
<u>                    Pool decks</u>	<u>30 gross</u>
<u>Stages</u>	<u>15 net</u>
<u>Educational occupancies</u>	
<u>Classroom area</u>	<u>20 net</u>
<u>Shops, laboratories, and similar vocational areas</u>	<u>50 net</u>
<u>Health care</u>	
<u>Sleeping departments</u>	<u>120 gross</u>
<u>Inpatient departments</u>	<u>240 gross</u>
<u>Detention and correctional</u>	

<u>Maximum number of persons intended to occupy that floor, but not less than</u>	<u>120 gross</u>
<u>Residential</u>	
<u>Hotels, motels, dormitories, apartment buildings:</u>	
<u>Maximum probable population, but not less than</u>	<u>200 gross</u>
<u>Lodging or roominghouses:</u>	
<u>Sleeping accommodations for a total of sixteen or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities or individual occupants</u>	<u>No requirements</u>
<u>One-family and two-family dwellings</u>	<u>No requirements</u>
<u>Residential board and care occupancies</u>	<u>Note 3</u>
<u>Mercantile (including malls)</u>	
<u>Street level and below (sales)</u>	<u>30 gross</u>
<u>Upper floor (sales)</u>	<u>60 gross</u>
<u>Office areas</u>	<u>100 gross</u>
<u>Storage, receiving, or shipping (not open to the general public)</u>	<u>300 gross</u>
<u>Assembly areas</u>	<u>See "Assembly"</u>
<u>Business</u>	
<u>Business purposes</u>	<u>100 gross</u>
<u>Other purposes</u>	<u>Note 4</u>
<u>Industrial</u>	
<u>Maximum number of persons intended to occupy that floor but not less than</u>	<u>100 gross</u>
<u>Storage</u>	
<u>No occupant load factor specified</u>	
<u>Day care</u>	
<u>Maximum number of persons intended to occupy that floor, but not less than</u>	<u>35 net</u>

\* Net floor area is the actual occupied area, not including accessory unoccupied areas or thickness of walls.

\*\* Gross floor area is the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

(a) --An--assembly--area--of--concentrated--use--without--fixed seats--such--as--an--auditorium;--church;--chapel;--dance floor;--or--lodge--room---seven--square--feet--{.65--square meters}--per--person.

(b) --An--assembly--area--of--less--concentrated--use--such--as--a conference--room;--dining--room;--drinking--establishment; exhibit--room--gymnasium;--or--lounge--fifteen--square--feet {1.39--square--meters}--per--person.

(e) Standing room or waiting space --- three square feet [2.8 square meters] per person.

(d) Bleachers, pews, and similar bench-type seating --- eighteen linear inches [45.72 centimeters] per person.

Note 1. Bleachers, pews, and similar bench-type seating: one person per eighteen linear inches [45.72 centimeters].

Note 2. Fixed seating. The occupant load of an area having fixed seats must be determined by the number of fixed seats installed. Required aisle space serving the fixed seats may not be used to increase the occupant load.

Note 3. Refer to chapters 22 and 23 of Life Safety Code, NFPA 101, 1997 edition.

Note 4. Occupant load factors associated with the use.

6. Building classification table.

x - indicates required  
o - indicates not required

	Illumination	Exit	Marking	of Means of	Egress	Emergency
Occupancy						
Places of assembly						
Class A-1000 persons or more		x		x		x-6&7
Class B-300 to 1000 persons		x		x		x
Class C-50 to 300		x		x		x
All windowless or underground places of assembly		x		x		x
Churches --- Class C (exclusive for religious worship)		x		x		o
Class A & B		x		x		x
Educational						Note-4
All educational occupancies including administrative area, general classrooms, mechanical rooms, and storage rooms		x		x		o

(a)--All-interior stairs-and-corridors	x-----x-----x
(b)--Shop-and laboratories	x-----x-----x
(c)--In-flexible-and open-plan-buildings	x-----x-----x
(d)--In-all-portions of-buildings-that are-interior-or windowless	x-----x-----x
Day-care-centers-- (More-than-12-persons)	x-----x-----x
Group-day-care-homes 7-to-including-12 persons	x-----x-----o
Family-day-care-homes Fewer-than-7-persons	x-----x-----o
Health-care-occupancies Hospitals-and-nursing homes-(for-complete details-see-article 517-of-NEC-or-NFPA standard-99	x-----x-----x
	-----Note-1
Detention-and-correctional occupancies	x-----x-----x
These-occupancies include-residential-- restrained-care, reformatories,-jails, detention-centers,-and correctional-centers	
Residential Hotels-and-motels More-than-16-and less-than-26 rooms	x-----x-----o
More-than-25 rooms	x-----x-----x--Note-2
Apartment-buildings 12-or-less apartments	x-----x-----o--Note-3
More-than-12 apartments-or four-or-more floors	x-----x-----x--Note-3
Lodginghouses-or roominghouses	

less-than-16---x-----x-----o  
 Dormitories---same-as-hotels

**Mercantile**

Class-A---over  
 30,000  
 square-feet-----x-----x-----x  
 Class-B---3000-to  
 30,000  
 square-feet-----x-----x-----x  
 Class-C---under  
 3000  
 square-feet-----x-----x-----o

**Business**

Under-1000-persons,  
 1-floor-----x-----x-----o  
 2-or-more-stories  
 above-exit-discharge-x-----x-----x  
 100-or-more-persons  
 above-or-below-level  
 of-exit-discharge---x-----x-----x  
 1000-or-more-persons---x-----x-----x  
 All-windowless,-and  
 underground-----x-----x-----x

**Industrial**

All-----x-----x-----x  
 When-occupied-during  
 daylight-hours-only  
 with-skylights-or  
 windows-----x-----o-----o

**Storage**

All-----x-----x-----x-  
 When-occupied-during  
 daylight-hours-only  
 with-windows-----x-----o-----o

\*-Storage-occupancies-do-not-require-emergency  
 lighting-when-not-normally-occupied.

**Special-provisions**

Underground-or  
 windowless-buildings  
 or-structures-----x-----x-----x

**Swimming-pools**

{other-than-single  
 family-residential}-x-----x-----x

Combined-facility-----Note-5

NOTES:

- Note-1:--Power-supply-for-exit-and-emergency lighting-must-conform-to-NFPA-110:  
 Note-2:--Where-each-guestroom-on-ground-floor-has direct-exit-to-outside;-no-emergency-lighting need-be-provided-(motels):  
 Note-3:--Buildings-with-only-one-exit-need-not-be provided-with-exit-signs:  
 Note-4:--Small-schools-familiar-to-occupants-need not-be-provided-with-exit-signs:  
 Note-5:--Where-the-same-means-of-egress-serve multiple-use-or-combined-occupancies;-exit lighting;-exit-signs;-and-emergency-lighting shall-be-provided-for-the-occupancy-with-the most-stringent-lighting-requirements:--The occupant-load-of-each-type-of-occupancy-shall] be-added-to-arrive-at-the-total-occupant-load:  
 Note-6:--Exit-lighting-on-floor-of-motion-picture theaters-may-be-reduced-to-one-fifth-foot-candle during-period-of-performance:  
 Note-7:--See-occupant-load-value-table:

Occupancy	Marking of Means Egress	Illumination of Means Egress	Emergency Lighting
Assembly	x	x	x
Educational	x Note 4	x	x
Interior stairs and corridors	x	x	x
Normally occupied spaces	x	x	x Note 6
Flexible and open plan buildings	x	x	x
Interior or windowless portions of buildings	x	x	x
Shops and laboratories	x	x	x
Health care occupancies (Note 1) (for complete details see article 517 of NEC and NFPA standard 99)	x	x	x
Detention and correctional	x	x	x
Residential			
Hotels and dormitories	x	x	o
More than twenty-five rooms	x	x	x Note 2
Apartment buildings			
Twelve or less apartments	x	x	o Note 3
More than twelve apartments or greater than three floors	x	x	x Note 3
Residential board and care			
More than sixteen	x	x	x
Mercantile			
Class A - over thirty thousand square feet [2787.09 square meters]	x	x	x

<u>Class B - three thousand to thirty thousand square feet [278.71 square meters to 2787.09 square meters]</u>	x	x	x
<u>Class C - under three thousand square feet [278.71 square meters]</u>	x Note 7	x	o
<u>Malls</u>	x	x	x
<u>Business</u>	x	x	o
<u>Two or more stories above exit discharge</u>	x	x	x
<u>Fifty or more persons above or below level of exit discharge</u>	x	x	x
<u>Three hundred or more persons</u>	x	x	x
<u>All windowless and underground</u>	x	x	x
<u>Industrial</u>	x	x Note 8	x Notes 8 & 9
<u>Storage</u>	x	x Note 10	x Notes 10 & 11
<u>Day Care</u>			
<u>Interior stairs and corridors</u>	x	x	x
<u>Normally occupied spaces</u>	x	x	x Note 6
<u>Flexible and open plan buildings</u>	x	x	x
<u>Interior or windowless portions of buildings</u>	x	x	x
<u>Shops and laboratories</u>	x	x	x
<u>Family day care homes (more than three but fewer than seven persons)</u>	o	x	o
<u>Group day care homes (seven to twelve persons)</u>	o	x	o

Special structures (refer to chapter 32, Life Safety Code, NFPA 101, 1997 edition.

Mixed occupancies (Note 5).

NOTES:

Note 1. Exception: Power supply for exit and emergency lighting must conform to NFPA 110.

Note 2. Exception: Where each guest room or guest suite has an exit direct to the outside of the building at street or ground level emergency lighting is not required.

Note 3. Exception: Buildings with only one exit need not be provided with exit signs.

Note 4. Exception: Signs are not required in situations where locations of exits are otherwise obvious and familiar to all occupants, such as in small elementary school buildings.

Note 5. Exception: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting must be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy must be added to arrive at the total occupant load.

Note 6. Exception: Administrative areas, general classrooms, mechanical rooms, and storage areas.

Note 7. Exception: Where an exit is immediately apparent from all portions of the sales area, the exit marking is not required.

Note 8. Exception: Special purpose industrial occupancies without routine human habitation.

Note 9. Exception: Structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination on all portions of the means of egress during these hours.

Note 10. Exception: Storage occupancies do not require emergency lighting when not normally occupied.

Note 11. Exception: In structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination of all portions of the means of egress during these hours, emergency lighting is not required.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-16.1.** Fire Smoke detectors and fire alarm systems requirements for evacuation and life safety. Fire alarms must be installed in accordance with the ~~current~~ currently adopted state uniform building code and state fire code.

1. Smoke detectors. Dwelling units, congregate residences, and hotel or lodging house guest rooms that are used for sleeping purposes must be provided with smoke detectors. Detectors must be installed in accordance with the approved manufacturer's instructions.

a. In new construction, required smoke detectors must receive their primary power from the building wiring when such wiring is served from a commercial source and must be equipped with a battery backup. The detector must emit a signal when the batteries are low. Wiring must be permanent and without a disconnecting switch other than those required for overcurrent protection. A detector

must be interconnected so all alarms sound when one is activated. If an existing dwelling unit has an interconnected smoke detector system, the rest of the dwelling unit must be interconnected with the existing smoke detector system.

b. In dwelling units, a detector must be installed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector must be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detectors must be installed on the upper level, except that when the lower level contains a sleeping area, a detector must be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches [60.96 centimeters] or more, smoke detectors must be installed in the hallway and in the adjacent room.

2. Fire alarm systems. Apartment houses and hotels must be provided with a manual and automatic fire alarm system in apartment houses three or more stories in height or containing sixteen or more dwelling units, in hotels three or more stories in height or containing twenty or more guest rooms, and in congregate residences three or more stories in height or having an occupant load of twenty or more.

The following table is not a part of the administrative code, but is offered as a condensed guide for your convenience. For further information consult the currently adopted state uniform building code and fire code:

#### Fire Alarm System

0 - NOT required                      X - required

<u>Occupancy</u>	<u>Manual Stations</u>	<u>Smoke Detector</u>	<u>Heat Detector</u>	<u>Flow Switch</u>	<u>Fire Station Alarm</u>
<u>Assembly under three hundred</u>	0	0	0	0	0
<u>Assembly over three hundred</u>	X Note 1	0	0	0	0
<u>Amusement buildings</u>	X	X	0	X	X
<u>Hotel-motel Nineteen rooms or less</u>	0	X Note 2	0	0	0

<u>Three or more story *</u>	X	X	0	0	0
<u>Hotel-motel</u>					
<u>Twenty rooms or more * and congregate residences</u>	X	X Note 2	X	X	0
<u>Commons area</u>					
<u>Hotels-motels-apartment houses</u>	X	X	X Note 3	Note 5	
<u>Educational</u>					
<u>NDCC section 18-12-16</u>					
<u>Institutional *</u>	X	X	X	X	X
<u>Office - High-rise</u>	X	X	X	X	
<u>Apartments (see #2 above)</u>	0	X	0	0	0
<u>Industrial - Check with the local fire authority or the state fire marshal</u>					
<u>Office building - Check with local jurisdiction</u>					

\* Health department rules.

Note 1. Placement of devices shall be at exit on each level.

Note 2. Detectors required in each sleeping room and one detector for each seventy-five feet [22.86 meters] of hallway.

Note 3. When automatic sprinklers and flow detectors are installed, they shall be connected to the alarm system. Heat detectors required in mechanical room, laundry room, and storerooms.

Note 4. Institutional includes hospitals, nursing homes, jails, and similar facilities, including any occupancy where movement is restricted.

Note 5. If equipped with sprinkler.

Note 6. Emergency voice alarm and signal.

Note 7. One hundred or more sprinkler heads.

All signaling devices for all occupancies must meet Americans with Disabilities Act (ADA) requirements (check ADA requirements).

Smoke detectors in hotels, motels, and apartments are not to be tied to the central alarm system (alarm in room or apartment only).

Central alarm trouble indicator must be located where it will be heard.

Systems with two or more zones must have an annunciator panel located at an entrance approved by the local fire department.

Cities may have additional or more stringent requirements.

Be aware the table is the minimum and the owner or designer may ask for more.

**History:** Effective February 1, 1996; amended effective January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

**24-02-01-17. Carnivals.** This section provides standards for temporary outdoor installations of portable electrical wiring and equipment for carnivals and celebrations consisting of overhead and underground installations for lighting and power to tents, stands, concessions, and amusement rides and shall comply with article 525, 1999 edition, National Electrical Code.

1. Circuit--wires--of--adequate-size-may-be-a-twisted-pair-or-run parallel-and--taped--together,--and--must--be--attached--to--a messenger--by--approved--insulators--at-intervals-of-five-feet [1.52-meters];
- 2.--Sockets-or-receptacles,-including-their-individual-conductors, must-be-of-the-standard-molded--"pigtail"--weatherproof--type. Connections--of-these-socket-wires-to-the-cabled-circuit-wires must-be-staggered-and-splices-made-in-an-approved-manner;
- 3.--Cutouts--and--switches--installed-outdoors-must-be-in-standard weatherproof-cabinets.--Cabinets-less-than--eight--feet--[2.43 meters]--above--the-ground-must-be-kept-locked-when-accessible to-the-public;
- 4.--All--metal--stands,-concessions,-amusements,-rides,-trailers, etc.--that-are-supplied-with-current-must-be-grounded--in--an approved--manner.--All-electrical-equipment-and-motors-must-be effectively-grounded;
- 5.--All-feeders-and-circuits-must-be-fused-properly;
- 6.--Each--ride--or--concession--must-be-provided-with-a-disconnect switch;
- 7.--Splices---and---taps---must---be---accomplished---in---an---approved weatherproof-box-or-cabinet-and-may-not-be-accessible--to--the public.--Splices-or-taps-may-not-be-buried-in-the-ground;
- 8.--Cable-must-be-in-good-condition,-in-continuous-length-from-box to-box-and-approved-outdoor-cord-connectors-must-be-used;
9. All temporary outdoor installations must be approved by the electrical inspector before usage.



2. Before work commences on any electrical installation where a new entrance is installed, an existing entrance is altered, a building is moved, or where the cost of the repair work or additional installation exceeds three hundred dollars, the master or class "B" electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. The ~~gold~~ goldenrod copy of the certificate must be forwarded to the state electrical inspector board or city electrical inspection authority having jurisdiction and the canary copy to the power company before work is commenced. Within fifteen days of completion, use, or occupancy, whichever is foremost, the white and green copies must be forwarded to the office of the state electrical board, along with the proper fee. The pink copy must be retained by the master or class "B" electrician and the manila copy must be left in, or on the panel or given to the owner. All six copies must contain a description of the work and the legal description of the location. Certificates with job cost of five thousand dollars or less are valid twelve months from the original filing date. The wiring certificate must be submitted with proper description of work completed and with the proper fee. A new wiring certificate must be filed on all unfinished work.
  
3. The electric wiring certificates shall ~~be~~ are available from the state electrical board at Bismarck, North Dakota, upon request of any master or class "B" electrician holding a proper current license from the electrical board. The master or class "B" electrician ~~must~~ shall be held responsible for all certificates issued to ~~him~~ that person. A charge of fifteen dollars to cover board costs must be imposed on each lost wiring certificate.
  
4. A copy of an electrical wiring certificate must be filed with the power supplier before an electrical installation may be energized.
  
5. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$300.00	\$15.00 (minimum fee)
\$300.00 to \$3,000.00	\$15.00 for the first \$300.00 plus 2% on balance up to \$3,000.00
\$3,000.00 to \$10,000.00	\$69.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$174.00 for the first \$10,000.00 plus 1% on balance up to

	\$15,000.00
\$15,000.00 to \$100,000.00	\$224.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$649.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fee must accompany the copies of wiring certificates which must be forwarded to the State Electrical Board, Box 857, Bismarck, North Dakota 58502.

6. Whenever an electrical installation made by or under the supervision of a master or class "B" electrician is commenced or in use without submitting an electrical wiring certificate, as directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of ~~twenty-five~~ fifty dollars. In addition, when time and travel is expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs to be calculated at a rate of ~~twenty-five~~ fifty dollars per hour and ~~twenty~~ twenty-five cents per mile of travel.
7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of ~~twenty-five~~ fifty dollars, which must be paid to the board by the master or class "B" electrician.
8. All reinspections must be paid for by the electrical contractors at a cost of ~~twenty-five~~ fifty dollars per hour with a minimum charge of ~~twenty-five~~ one hundred dollars.
9. The electrical inspection fee must be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:
  - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, etc and similar equipment.
  - b. ~~Electric---heating---panels;---including---heating~~ Heating, ventilating, and air-conditioning (HVAC) units.
  - c. Electric motors.
  - d. ~~---Trenching;---concrete---basis---for---streetlighting---and---traffic signal---standards.~~

11. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are removed from an existing installation and placed at another location, the electrical contractor shall estimate the cost of these materials and include the amount in the job cost for the purpose of calculating the proper inspection fee.
12. The inspection fee for all motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:

Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$20.00

Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00

Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00

The master electrician (restricted) having supervision of elevator or dumbwaiter installations shall obtain electrical wiring certificates from the state electrical board. The certificate form must be completed, signed by the master electrician (restricted), and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee.

13. Electrically driven irrigation machines. Each center pivot system, a flat fee of fifty dollars. All other ~~types work~~, the fee must be based on the cost of electric-material electrical materials and labor (see-section-24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the fee must be ~~twenty~~ fifty dollars per ~~man~~ hour, including travel time, plus ~~twenty~~ twenty-five cents per mile traveled.
15. For ~~requested-inspection-by-an-owner~~ self-wire inspections on wiring done by the owner, the inspection fee must be as stated in this section, except the minimum must be ~~forty~~ fifty dollars. Owner wiring may be done on residential and farmstead property occupied by the owner. Certification and inspection is required as stated in subsection 1. The owner is required to notify the state electrical board or authority having jurisdiction before work commences. Requests for inspection of ~~owner-wired~~ owner-wired installations must be in

writing and must be accompanied by a print or drawing depicting the wiring to be done.

**History:** Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; March 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

24-02-01-20. Separability Severability. If any section, sentence or clause, or any part provision of this chapter or the applicability thereof to any person circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**History:** Amended effective January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-05

24-02-01-22. Continuing education requirements.

1. Each master, journeyman, and class B electrician license shall not be renewed unless the continuing education requirements of North Dakota Century Code section 43-09-15.1 are met, of which a minimum of fifty percent of the hours must be based on the 1999 edition, National Electrical Code. The remaining credits must be subjects related to the electrical industry. Approval of the course curriculum is at the discretion of the North Dakota state electrical board.
  - a. Electrical continuing education programs will be accepted from technical or trade schools or colleges, electrical trade associations, or individual commercial providers.
  - b. Courses, seminars, and instructors must have prior approval by the North Dakota state electrical board to receive credit. Request for approval of courses, seminars, and instructors must be made no later than ten days prior to the board meeting. Board approval of courses, seminars, and instructors accepted expires when the state electrical board adopts an updated edition of the National Electrical Code.
  - c. Application for approval of courses and instructors must be on a form provided by the North Dakota state electrical board. A complete description (detailed curriculum outlining the subject matter along with the time and sequence of each item) or copies of all materials provided to the attendants must be submitted.

- d. Continuing education programs held in other states and not granted prior approval according to this section may be considered for credit if the board is provided with evidence that the educational programs meet the requirements of the state electrical board and are approved for required continuing education credits by the public authority for licensing electricians in that state. Continuing education credit for correspondence courses approved by other states is not accepted.
  - e. The board must be notified in writing no later than fifteen days prior to the date, time, and location of the presentation. A representative of the North Dakota state electrical board must be able to attend without charge and have the authority to audit or review continuing education presentations.
  - f. The board shall withdraw approval of any educational program not in compliance with this section.
  - g. The provider of the presentation shall forward an attendance list to the board on a form supplied by the board within fifteen days following the presentation but no later than March thirty-first of that year. A certificate of completion must also be provided to each licensee in attendance. Each certificate of completion and attendance list must include the name of the provider, the name of the instructor, the course identification number, the date and location of presentation, the number of code and noncode hours of instruction for continuing education units, the electrician's name, and the electrician's license number or social security number. It is the responsibility of the licensee to have a copy of this certificate of completion. The certificates must be sent to the board only if requested to do so by the board.
  - h. Continuing education credits are valid for a period up to two license renewal periods.
2. Instructors shall submit their qualifications to the state electrical board prior to the presentation of the course or seminar. Courses will not be approved unless the instructor has one or more of the following qualifications:
- a. A master electrician with at least one year's experience in electrical inspection.
  - b. A journeyman or master electrician who is certified as an instructor through a vocational education department.
  - c. A person with a valid teaching accreditation from a trade or technical school, college, or university teaching an electrical curriculum.

- d. A registered or licensed electrical engineer with at least four years' experience in design of premise electrical wiring systems.
- e. A representative from the national fire prevention association, testing laboratories, international association of electrical inspectors, and other product manufacturer representatives with five years' practical experience in the subject taught.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-09-05

**Law Implemented:** NDCC 43-09-21, 43-09-22

APPENDIX

Short Cut  
At 75° C

Voltage Drop Formulas 167° F

Voltage drop = K x L ft. x I

C.M.A.

or

C.M.A. = K x L ft. x I

% drop x voltage

L = length in feet, one way

I = load in amps

E = Volts

C.M.A. = circular-mil area

K-factor = 25.8 multiplying factor for copper, 42.4 multiplying factor for aluminum at 75° C.

Percent drop = permissible voltage drop times voltage of circuit as follows:

3% of 208 = 208 x .03 = 6.24 volts

3% of 120 = 120 x .03 = 3.6 volts

3% of 240 = 240 x .03 = 7.2 volts

5% of 240 = 240 x .05 = 12.0 volts

Example:

240 volts, 1,000 ft. distance, 10 ampere load, 5% drop

$$\underline{25.8 \times 1,000 = 25,800 \times 10 = 258,000}$$

$$\underline{258,000 \text{ divided by } 26,250 \text{ (C.M.A. of No. 6)} = 9.8 \text{ volts (less than 5%)}$$

$$\underline{258,000 \text{ divided by } 16,510 \text{ (C.M.A. of No. 8)} = 15.6 \text{ volts (more than 5%)}$$

120 volts, 8 ampere load, 100 ft. distance, 3% drop

$$\underline{25.8 \times 100 = 2,580 \times 8 = 20,640}$$

$$\underline{20,640 \text{ divided by } 6,530 \text{ (C.M.A. of No. 12)} = 3.16 \text{ volts (less than 3%)}$$

$$\underline{20,640 \text{ divided by } 4,107 \text{ (C.M.A. of No. 14)} = 5.0 \text{ volts (more than 3%)}$$

or

$$\underline{25.8 \times 8 \text{ amps} \times 100 \text{ ft.} = 20,640}$$

$$\underline{20,640 \text{ divided by } 3.6 \text{ (volts representing 3\%)} = 5,733 \text{ C.M.A. (No. 12)}$$

For 3-phase circuits, use formula, then multiply the results by .86.

**TITLE 28**

**Engineers and Land Surveyors, Board of Registration for Professional**



NOVEMBER 1998

CHAPTER 28-02.1-09

**28-02.1-09-02. Renewals.** Registration and certificates of authorization may be renewed as follows:

1. Each ~~Every~~ other year, beginning with 1999, the board shall mail renewal notices prior to December first to the last address of record for each registration and certificate holder advising of the amount of the renewal fee and the pending expiration date.
2. Renewal fees received will be acknowledged by returning to the registrant a wallet card bearing ~~his~~ the registrant's name and registration number or a new certificate of authorization duly signed; ~~each~~ acknowledging renewal to the next date of expiration.
3. Receipt of renewals prior to March thirty-first will ensure that the registrant's name and address will be published in the next roster.

**History:** Effective January 1, 1988; amended effective November 1, 1998.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-22

**28-02.1-09-03. Reinstatements.**

1. A registrant ~~or a holder of a certificate of authorization~~ who has allowed ~~his~~ the registrant's registration ~~or authorization~~ to lapse for more than ~~one year~~ two years, but less than five years, may become reinstated by paying ~~of current year~~ the

renewal fee for the current registration period plus one-year two years back renewal fee. A holder of a certificate of authorization who has allowed the authorization to lapse for more than one year, but less than five years, may become reinstated by paying the current year renewal fee plus one year back renewal fee.

2. Registrations and certificates which have lapsed five years or more require reapplication updating all the required information of the applicant as if an original application. The board may require reexamination of registrants for all or a portion of the examination qualification requirements.

**History:** Effective January 1, 1988; amended effective November 1, 1998.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-22

**CHAPTER 28-02.1-10**

**28-02.1-10-02. Fees.** Effective July-1,1987 January 1, 1999, the following fees may not exceed:

Registration Fees

Professional engineer	\$ 50.00
Land surveyor	\$ 50.00
Partnership or corporation	\$100.00
Temporary permit	\$ 50.00

Examination fee (in addition to the registration and renewal fees) at board cost, including scoring and five dollars for postage and handling and proctoring.

Cost of administration of continuing education or professional competency programs will be assessed and billed annually to the professions requesting these services. Billings will be separately identified apart from the renewal fees.

Renewal Fees

Professional engineer	\$ <del>50.00</del> <u>100.00</u>
Land surveyor	\$ <del>50.00</del> <u>100.00</u>
Professional engineer and land surveyor	\$ <del>95.00</del> <u>190.00</u>
Partnership or corporation	\$100.00

**History:** Effective January 1, 1988; amended effective August 1, 1994; November 1, 1998.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-18, 43-19.1-27



**APRIL 1999**

**CHAPTER 28-01-01**

**28-01-01-01. Organization of board of registration for professional engineers and land surveyors.**

1. **History and function.** The 1943 legislative assembly first provided for registration of professional engineers by a law codified as North Dakota Century Code chapter 43-19. The 1957 legislative assembly first provided for registration of land surveyors by a law codified as North Dakota Century Code chapter 43-24. In 1967 the legislative assembly repealed both of these chapters and replaced them with one chapter regulating professional engineers and land surveyors under the board of registration for professional engineers and land surveyors. The chapter is codified as North Dakota Century Code chapter 43-19.1. The function of the board is to regulate the practice of engineering and land surveying by registering qualified engineers and land surveyors.
2. **Board membership.** The board is appointed by the governor and consists of four professional engineer members and one professional land surveyor member. Each professional engineer member must be a registered professional engineer whose name has been submitted to the governor by the North Dakota society of professional engineers for appointment. The professional land surveyor member must be a registered professional land surveyor whose name has been submitted to the governor by the North Dakota society of professional land surveyors for appointment. Members of the board serve five-year terms, and one term expires each year.

3. **Executive secretary.** The executive secretary is appointed by the board and is responsible for administration of the board's activities.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

Mr.--Laverne-L.--Zink  
North Dakota State Board of Registration for  
Professional Engineers and Land Surveyors  
P.O. Box 1357  
Bismarck, North Dakota 58502

**History:** Amended effective January 1, 1980; February 1, 1984;  
November 1, 1985; January 1, 1988; August 1, 1994; April 1, 1999.  
**General Authority:** NDCC 28-32-02.1  
**Law Implemented:** NDCC 28-32-02.1

## CHAPTER 28-01-02.1

**28-01-02.1-01. Meetings.** The board shall hold meetings at least twice each year, ~~on the third Friday~~ including at least one in January and ~~the--third--Friday~~ one in July. The chairman may call special meetings when the chairman deems such meetings necessary. The executive secretary shall ~~notify all members at least one calendar week in advance of a meeting; and shall~~ give public notice as required by law. The date, time, and place of each meeting must be mutually agreed upon by a quorum of the board. All meetings of the board, whether regular meetings or special meetings, must be open public meetings.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-07

**28-01-02.1-02. Order Items of business - Rules of procedure.** The ~~order~~ Items of business must be include:

1. Roll call.
2. Minutes of last meeting; approval.
3. Agenda.
4. Financial report; approval - roll call vote.
5. Appearances; guest, applicants, complainants, defendants.
6. Unfinished business.
7. Applications.
8. New business.
9. Status report of complaints and investigations.
10. Adjournment.

Robert's Rules of Order must govern procedure of the board except as otherwise provided by ~~title 28 or state statute~~ this chapter.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-07

**28-01-02.1-04. Officers and board staff.**

1. The board shall hold an election at the first meeting after July first of each year and elect a chairman, vice chairman, and secretary.
2. Each officer will be elected for one year and may be reelected.
3. The chairman:
  - a. Shall be the executive head of the board.
  - b. Shall preside at all meetings when present.
  - c. Shall call meetings of the board when ~~he~~ the chairman deems such meetings necessary.
  - d. Shall sign all certificates of registration.
4. The vice chairman shall in the absence or incapacity of the chairman exercise the duties and shall possess all the powers of the chairman.
5. The secretary shall sign all official documents prepared by the board and shall sign all ~~registration~~ certificates of registration.
6. The executive secretary shall perform all duties as may be prescribed by the board.
7. The secretary or executive secretary shall give to the state a surety bond in an amount determined by the board.
8. The office of the board may be established at a place designated by the board.
9. The board shall establish, appoint, and create ad hoc or standing committees to study, research, and evaluate such matters as assigned. For each committee a chairman must be designated.
10. Board officers and members serve without compensation except for vouchered per diem when engaged in state business approved by the board and for vouchered subsistence, lodging, and travel expenses at the rates established for any other state employee.
11. The ~~executive-secretary~~ board staff members must be reimbursed vouchered expenses for approved travel and subsistence at state rates.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-03

**28-01-02.1-05. Forms - Records - Roster - Reports.**

1. **Forms.** ~~All applications and requests, for which the board has prescribed a form, must be presented on these forms. Copies of forms in use and instructions for their completion are available from the board office.~~ The board shall prescribe forms for applications and other documents. Copies of the forms and the instructions for completing the forms must be obtained by request from the board office. All applications and documents must be completed in accordance with the board's instructions.
2. **Records.**
  - a. The open records law requires that most records, papers, and reports of the board are public in nature and may be obtained through the executive secretary upon request and payment of costs of reproduction, handling, and mailing.
  - b. The board shall keep a record of all its proceedings, including its action on each application coming before the board.
  - c. The board shall keep a record of all applications and requests received.
  - d. The board shall keep a record of all certificates issued.
  - e. The board shall keep a record of all complaints received and of any actions taken on those complaints.
3. **Roster.** The closing date for all registrants to be included in the roster for any year is March first. The roster must contain, among other things, the names of all registered professional engineers and registered land surveyors showing the registrant's address. Copies of the roster must be made available and mailed upon request at no cost to each person holding a current registration and mailed to or made available to all county and city auditors and clerks of district courts. Copies must be placed on file with the secretary of state and with the libraries in accordance with the state repositories laws. Copies may be sold to the public at a cost not less than the cost of publication and postage.
4. **Annual reports.** An annual report, an annual audit report, and such other summaries as required must be filed with the appropriate state agencies as required, such as the office of the governor, state auditor, and secretary of state.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-09, 43-19.1-10, 43-19.1-11

**28-01-02.1-06. Statement of purpose of rules - Amendments.**

1. **Purpose of rules.** The purpose of these rules is to ensure proper, equitable, and uniform performance of the duties of the board of registration by regulation of its members, personnel, meetings, records, examinations, and the conduct thereof.
2. **Amendment of rules.** These rules may be amended ~~at any regular meeting of the board~~ by a ~~majority vote of~~ the board ~~membership and~~ in accordance with state statutes North Dakota Century Code chapter 28-32.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08

**28-01-02.1-07. Gender and definitions.**

1. **Gender.** This title is to be read and interpreted in a nongender context without regard to race, creed, or sex.
2. **Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-19.1, except:
  - a. "Accreditation board for engineering and technology accredited curriculum" means those academic programs offered by institutions of higher learning which the ~~national~~ accreditation board for engineering and technology (ABET) certify to have met the criteria and qualifications required to receive the designations as accredited programs in the education, training, and preparation of the graduates from such programs; engineering curriculum must have the accreditation of the engineering accreditation commission (EAC) within the accreditation board for engineering and technology and land surveying curriculum must have either engineering accreditation commission or technology accreditation commission (TAC) of the accreditation board for engineering and technology to be acceptable to the board.
  - b. "Application" means the act of furnishing data, documents, and such information under oath as may be required by the board and on forms prescribed by the board.
  - c. "Code of ethics" means that set of rules prescribed by the board and adopted herein which govern the professional conduct of all registrants.

- d. "Engineering intern" and "land surveyor (surveying) intern" are recognized by the board as synonymous with engineer-in-training and land surveyor-in-training provided the intern designations are conferred under the same requirements as the "in-training" designations pursuant to these rules.
- e. "Examination" means that series of tests prescribed by the board which are developed to ascertain the level of proficiency in the fundamentals and in the practices of the professions regulated by the board.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08

## CHAPTER 28-02.1-01

### 28-02.1-01-01. Applications - Kinds of applications.

Applications may be submitted to the board for registration as a:

1. Engineer-in-training.
2. Land surveyor-in-training.
3. Professional engineer.
  - a. Examination.
  - b. Endorsement.
4. Registered land surveyor.
  - a. Examination.
  - b. Endorsement.
5. Professional engineer temporary permitholder.
6. Business with a certificate of ~~authority~~ authorization to practice engineering or land surveying.
7. Reinstatement for lapsed registration of a certificate holder.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08

### 28-02.1-01-02. Completing applications.

1. All data and information requested on the board's application forms must be furnished accurately and completely.
2. When space provided on forms is inadequate, use supplementary sheets provided by this board (or if not provided, sheets of a good grade of white paper, eight and one-half by eleven inches [215.90 by 279.40 millimeters] are to be used).
3. All applications made to this board must be subscribed and sworn to on the forms used by the applicant before a notary public or other persons qualified to administer oaths.
4. In order to allow sufficient time for processing and for securing examinations, all applications which may require examinations must be filed with this board prior to

January first for the ~~April~~ spring examinations and July first for the ~~October~~ fall examinations.

5. Withholding information or providing statements which are untrue or misrepresent the facts may be cause for denial of an application.
6. It is the responsibility of the applicant to supply correct addresses of all references and to be sure that the references are supplied as requested. If a reference fails to respond, this will delay the processing of an application either until a reply is obtained or another reference is supplied.
7. In relating experience, the applicant must account for all employment or work experience for the period of time which has elapsed since the beginning of the employment record. If not employed, or employed in other kinds of work, this should be indicated in the experience record.
8. Applications for registration properly executed and issued with verification by the national council of examiners for engineers and surveyors (NCEES) will be accepted in lieu of the same information that is required on the form prescribed and furnished by this board.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-12

**28-02.1-01-03. Applications from nonresidents.**

~~1. A person who is a resident of this state, for purposes of registration or certification, is defined as one who lives and is employed in the geographical boundaries of the state or is associated with a company which has a location in this state.~~

~~2. One who is a graduate of an accredited engineering or land surveying curriculum may apply in this state for original registration or certification.~~ Repealed effective April 1, 1999.

**History:** ~~Effective January 1, 1988.~~

**General Authority:** ~~NDCC-43-19.1-08~~

**Law Implemented:** ~~NDCC-43-19.1-08~~

**28-02.1-01-04. Applications from applicants with degrees from foreign schools.**

1. All foreign language documentation submitted with the completed application must be accompanied with translations certified to be accurate by a competent authority.
2. All applicants shall furnish evidence of experience which can be verified.
3. All applicants seeking registration must be prepared to write examinations which are administered in the English language.
4. ~~National~~ The board may require foreign curricula to be evaluated by university faculty administering accreditation board for engineering and technology accredited engineering programs, or national council of engineering examiners<sup>1</sup> examiners for engineering and surveying recommendations on foreign engineering curricula must generally may serve as a the board's guide for evaluation.
5. Those applicants who for political or other valid reasons are unable to obtain ~~transcripts--of~~ their college transcripts shall be required to complete a supplementary application form as approved by the board or the national council of engineering examiners for engineering and surveying.
6. ~~Foreign curricula may be required to be evaluated by university faculty administering engineering graduate school requirements in this state and such evaluations may be used as a guide by the board.~~

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-13

**28-02.1-01-05.** ~~Disposal~~ Disposition of applications. Applications may be approved; deferred for further information, more experience, acceptable references, or other reasons; or may be denied.

1. **Approved applications.** When an application is approved by the board ~~members~~ showing that the applicant has met all the requirements for registration or certification required by the statutes of this state, the applicant must be granted registration or certification with notification by the executive secretary of the board.
2. **Deferred applications.** Applications deferred for any reason ~~are retained on file pending later disposition when~~ require proper remedy as requested is presented before further consideration by the board.
3. **Denied applications.** ~~When an application is denied, it is kept on file for one year and then destroyed.~~ Applications

may be denied ~~{all--and--any--approval--thereof}~~ when in the board's judgment: ~~{a}-reinstatement~~

- a. Reinstatement is requested after revocation and there is insufficient rehabilitation; ~~or-(b)-an~~
- b. An application has been denied for cause in other jurisdictions; or
- c. The applicant has failed to establish that the applicant is of good character and reputation.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-25

**28-02.1-01-06. Reconsideration of applications.** Reconsideration may be requested of an application which has been denied or deferred when the request is based on additional information ~~or-reeonsideration;~~ ~~or-both.~~ Request must be made within one year after the decision was ~~made-to-rejeet~~ of the board to deny or defer the original application.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08, 43-19.1-14, 43-19.1-17

**28-02.1-01-07. Retention of records of applications.**

1. All applications, approved or deferred, unless otherwise specified in this or other sections of this chapter, will be retained in permanent-files-maintained-by-the-board accordance with North Dakota Century Code section 54-46-10 and article 4-09 of the North Dakota Administrative Code.
2. All applications for which required information has not been furnished for one year or more after the last entry in the applicant's file must be deemed to be an incomplete application. Incomplete applications may be destroyed.
3. Information may be extracted from approved applications to prepare the required publication of the roster. Such information may be stored on computer storage disks or tapes. From time to time information may be added to the records as it is supplied to the board. Added information may include address changes, notices of disciplinary actions, suspensions, lapses, or reinstatements.
4. At all times, upon proof of identity, an applicant's file is available for review. In no case may original documents be

altered, removed, or returned. Application records once submitted become the property of the board.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19-1-10 43-19.1-12

## CHAPTER 28-02.1-02

### 28-02.1-02-01. Processing of applications.

1. Application forms for registration as a professional engineer or land surveyor may be obtained from the office of the ~~secretary--of--the~~ board of registration for professional engineers and land surveyors.
2. Applications ~~must--be-received-in-the-board-office-by-January first-for-the-April-examinations-and-by--July--first--for--the October--examinations~~ for registration by examination must be filed with the board office prior to January first for the spring examinations and July first for the fall examinations.
3. All information received from references named by the applicant must be received at the board office. No member of the board may be named as a reference.
4. An applicant may not be admitted to the examination until the applicant's application has been received, processed, and approved by the board.
5. An applicant may not confer with any member of the board ~~while it-is-in-session-about-the~~ regarding an applicant's case while it is pending before the board. This,--however,--does-not-apply to-any-special-committee-which-the-board-appoints--nor--to--the executive--secretary--of--the-board. Any applicant may appear before the board at a scheduled meeting.
6. Applicants whose applications have been approved, but who fail to appear for examination four consecutive times, must be deemed to have withdrawn their applications. Further consideration must be based on reapplication.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08, 43-19.1-12

## CHAPTER 28-02.1-03

**28-02.1-03-01. Types of registration.** Engineers and land surveyors may become registered professional practitioners by examination, endorsement, or by temporary permit.

1. **Registration by examination.** Registration by examination is generally a two-step process for those applicants who have met the general qualification requirements; who have met certain education requirements or who have the experience deemed to be satisfactory and acceptable to the board, or both; and, who have successfully passed the examinations prescribed by the board.
  - a. The board has the written examination prepared by the national council of engineering examiners for engineers and surveyors as its standard of examinations and qualifications.
  - b. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation, an examination on the code of ethics may be required.
2. **Registration by endorsement.** Registration by endorsement is for engineers or land surveyors who hold a current registration in another state jurisdiction who ~~do-comply~~ substantially meet or have complied-with met, in the opinion of the board, the ~~minimum~~ requirements and qualifications required of-a-resident-of by North Dakota at-the-time-of-their statutes governing registration.
3. **Temporary permit - Temporary registration.** Educational and experience requirements must comply with North Dakota law. A one-time temporary permit ~~must~~ may be issued on the basis of one project and may not exceed one year. ~~Educational--and experience--requirements--must--comply--with-North-Dakota-law.~~ The applicant must be legally qualified to practice in the state or country of residence and must have current registration. A temporary permit must be approved prior to submission of plans and specifications for the execution of a project. Temporary permits for land surveyors are not authorized by North Dakota law.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08, 43-19.1-12.1, 43-19.1-13, 43-19.1-14, 43-19.1-29

## CHAPTER 28-02.1-04

**28-02.1-04-01. General requirements.** All applicants must:

1. Complete their applications on forms furnished by the board.
2. Complete the application under oath (an affidavit is required).
3. Furnish references as required but may not include board members as references.
4. In the case of student applicants for the fundamentals of engineering ~~{EIT}~~ (FE) and for the fundamentals of land surveying ~~{LSIT}~~ (FLS) examinations, certification by the dean of the college or the dean's appropriate designee agreed upon by the board may be used in lieu of references.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-12

**28-02.1-04-02. Experience.** The following describes what the board considers acceptable experience. The applicant must provide proof that the experience meets these requirements.

- ~~1. The experience must be gained following graduation or training when credit is to be granted on academic achievement.~~
- ~~2. The experience gained through military service must be substantially equivalent in character to civilian experience in similar fields or disciplines. Generally, military experience is not favored by the board unless the applicant served in a military engineering related component of the armed services.~~
- ~~3. 2. Experience must be of a grade and character which indicates to the board that the applicant may be competent to practice and preferably be gained under the supervision of a registered professional engineer or land surveyor.~~
- ~~4. 3. Experience must be substantially related to the registration or discipline applied for engineering or land surveying. Dual registration must fulfill experience requirements for each application without duplicate credits for time of gaining experience.~~
- ~~5. 4. Generally, the board will require responsible charge and design components requires progressive experience in applying the principles and methods of engineering analysis and design~~

for an applicant in fulfilling experience requirements if the applicant is seeking professional engineering registration.

- 6- 5. An engineering or land surveying applicant may be granted one year's experience for each postgraduate degree in the field of practice following a baccalaureate degree in the field of practice, not to exceed two years.

~~7.---Board---does---not---recognize---construction---staking---as---land surveying-experience.~~

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-14, 43-19.1-15, 43-19.1-16, 43-19.1-17

## CHAPTER 28-02.1-05

**28-02.1-05-01. Qualifications and requirements - Engineers-in-training.** Engineer-in-training applicants must satisfy the following requirements:

1. A graduate of a four-year or more accreditation board for engineering and technology accredited engineering curriculum program may be approved to write the fundamentals of engineering (EIT) (FE) examination. Senior year students within one year of graduation may be approved to write the fundamentals of engineering exam examination.
2. A graduate of a four-year nonaccreditation board for engineering and technology accredited engineering curriculum program and four additional years of acceptable experience may be approved to write the fundamentals of engineering (EIT) (FE) examination.
3. All other applicants not qualifying under subsections 1 and 2 must acquire ten years of acceptable engineering experience before they may be approved to write the fundamentals of engineering (EIT) (FE) examination.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-14, 43-19.1-15

**28-02.1-05-02. Qualifications and requirements - Professional engineer.** ~~Applicants with variant educational backgrounds will have different examination and experience requirements.~~ These requirements must be acquired sequentially as listed in the following categories:

1. Graduates from a four-year or more accreditation board for engineering and technology accredited engineering curriculum program must satisfy the following requirements:
  - a. An eight-hour examination in engineering fundamentals. (Engineer-in-training certificate)
  - b. A minimum of four years of acceptable engineering experience in engineering subsequent to graduation and prior to writing the principles and practice of engineering (PE) examination.
  - c. An eight-hour examination in the principles and practice of engineering (PE).

2. Graduates from ~~nonaccredited~~ a four-year or more nonaccreditation board for engineering and technology engineering curricula programs or related program that, in the opinion of the board, is substantially equivalent to engineering, must satisfy the following requirements:
  - a. An eight-hour examination in engineering fundamentals. (Engineer-in-training certificate)
  - b. A minimum of eight years' ~~experience-in-engineering-work of-a-character-satisfactory-to-the-board~~ acceptable engineering experience subsequent to graduation and prior to writing the principles and ~~practices~~ practice (PE) examination.
  - c. An eight-hour examination in the principles and practice of engineering (PE).
3. All other applicants not qualifying under subsections 1 and 2 must satisfy the following requirements:
  - a. An eight-hour examination in engineering fundamentals. (Engineer-in-training certificate)
  - b. A minimum of twenty years of acceptable ~~practice-in-engineering-work~~ experience, the last ten years of which ~~has-been-in-responsible-charge-of-engineering-work-of-a-character-satisfactory-to-the-board~~ demonstrates progressive experience in applying the principles and methods of engineering analysis and design prior to writing the principles and practice of engineering (PE) examination.
  - c. An eight-hour examination in the principles and practice of engineering (PE).
4. Teacher of engineering.
  - a. An eight-hour examination in engineering fundamentals is required. (Engineer-in-training certificate)
  - b. The individual must have taught, in an engineering school of recognized standing, a minimum of four years and must have a minimum of two years of practical engineering experience satisfactory to the board.
  - c. An eight-hour examination in the principles and practice of engineering (PE) is required.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-14

CHAPTER 28-02.1-06

**28-02.1-06-01. Qualifications and requirements - Land surveyors-in-training.** Land surveyors-in-training applicants must meet the following requirements:

1. A graduate of a four-year or more accreditation board for engineering and technology accredited land surveying or engineering curriculum approved by the board may be approved to write the fundamentals of land surveying ~~(LSIT)~~ (FLS) examination. Senior year students within one year of graduation may be approved to write the fundamentals of land surveying ~~(LSIT)~~ (FLS) examination.
2. A graduate of a ~~non-accreditation~~ nonaccreditation board for engineering and technology accredited curriculum in land surveying or engineering approved by the board and with two or more years of acceptable land surveying experience may be approved to write the fundamentals of land surveying ~~(LSIT)~~ (FLS) examination.
3. a. All other applicants not qualifying under subsections 1 and 2 must have at least four years of acceptable land surveying experience before they may be approved to write the fundamentals of land surveying ~~(LSIT)~~ (FLS) examination.  
b. ~~Nongraduates of any land surveying or engineering curriculum approved by the board may be granted up to two years credit toward their experience requirements. Up to two years of credit towards experience requirements may be granted upon completion of equivalent time in a board-approved land surveying or engineering curriculum.~~

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-16.1

**28-02.1-06-02. Qualifications and requirements - Registered land surveyor.** ~~Applicants with variant educational backgrounds have different examination and experience requirements.~~ These requirements must be acquired sequentially as listed in the following categories:

1. A graduate of a four-year or more accreditation board for engineering and technology accredited land surveying or engineering curriculum approved by the board:
  - a. An eight-hour examination in fundamentals of land surveying (LSIT certificate).

- b. A minimum of four years of experience in land surveying work of a character satisfactory to the board, and indicating that the applicant is competent to practice land surveying.
  - c. An examination in the principles and ~~practices~~ practice of land surveying ~~{tS}~~ (PLS).
  - d. ~~A--take-home-orientation~~ An examination pertaining to land surveying laws, procedures, and practices in North Dakota.
2. A graduate from a ~~non-accreditation~~ nonaccreditation board for engineering and technology accredited curriculum in land surveying or engineering approved by the board:
- a. An eight-hour examination in fundamentals of land surveying (LSIT certificate).
  - b. A minimum of six years' experience in land surveying work of a character satisfactory to the board, and indicating that the applicant is competent to practice land surveying.
  - c. An examination in the principles and ~~practices~~ practice of land surveying ~~{tS}~~-(PLS).
  - d. ~~A--take-home-orientation~~ An examination pertaining to land surveying laws, procedures, and practices in North Dakota.
3. All other applicants not qualifying under subsections 1 and 2:
- a. An eight-hour examination in the fundamentals of land surveying (LSIT certificate).
  - b. A minimum of eight years of experience in land surveying of a character satisfactory to the board indicating that the applicant is competent to practice land surveying. ~~Nongraduates--of--any--land---surveying---or---engineering curriculum--approved-by-the-board-may-be-granted-up-to-two years-credit-toward-their-experience-requirements. Up to two years of credit towards experience requirements may be granted upon completion of equivalent time in a board-approved land surveying or engineering curriculum.~~
  - c. A four-hour examination in the principles and ~~practices~~ practice of land surveying ~~{tS}~~ (PLS).
  - d. ~~A--take-home-orientation~~ An examination pertaining to land surveying laws, procedures, and practices in North Dakota.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-16, 43-19.1-16.1

## CHAPTER 28-02.1-07

**28-02.1-07-01. Applications.** Forms for making application to the board are available from the board and require the applicant:

1. ~~To be completed in duplicate.~~
2. To set forth the corporate officers and directors or the business partners by name and address.
3. 2. To list the names and addresses of all employees who are duly registered to practice professional engineering or land surveying in North Dakota.
4. 3. To set forth the name and address of the registered agent for the those business entity entities required to have a registered agent.
5. 4. To set forth who are or will be in responsible charge of any engineering or land surveying in this state, or both if the certificate of authorization is for the dual practice of engineering and land surveying.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-27

**28-02.1-07-02. Issuance of certificate of authority authorization.** Certificates of authority authorization issued by the board are not transferable and require the holder to:

1. Advise the board within thirty days of any change of officers, directors, partners, business addresses, registered agents, or of any disciplinary actions which ~~impairs~~ impair the registration and right to practice of any ~~of--the--persons~~ employee or ~~officers~~ officer of record in North Dakota.
2. Renew and update annually the names and addresses of the registered agent, officers, directors, or partners, and employees practicing engineers engineering or land surveyors registered surveying in North Dakota.
3. Keep and maintain its annual filing requirements with the secretary of state's office current and provide a copy of such to the board office.
4. Practice and performance of engineering or land surveying in this state subject to the same disciplinary actions of suspension or revocation for cause by the board of any individual registrant.

**History:** Effective January 1, 1988; amended effective April 1, 1999.  
**General Authority:** NDCC 43-19.1-08  
**Law Implemented:** NDCC 43-19.1-27

## CHAPTER 28-02.1-08

### 28-02.1-08-01. Certificates.

1. Certificates of registration issued by the board should be displayed by the registrant in a prominent place in the registrant's office or principal place of business.
2. In case a certificate is lost or destroyed, a duplicate certificate will be issued upon request. The charge for a duplicate certificate shall be as determined by the board.
3. Certificates of authorization are signed by the chairman and secretary and are issued on an annual basis.
4. ~~The board may request an applicant to participate in a presentation ceremony. Applicants are not required to participate in ceremonies to receive their certificate.~~

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-20, 43-19.1-27

### 28-02.1-08-02. Seals.

1. The board has adopted standard seals or stamps similar to those illustrated in the appendix to this chapter for use by registered professional engineers and land surveyors as prescribed by law.
2. Seals may be of rubber stamp or metal impression type and are, or electronic. Rubber stamp and metal impression seals may be ordered through the secretary of the board on forms supplied for this purpose.
3. All seals and stamps must be validated by the signature of the holder of the seal.
4. ~~The board cautions against the use of computer-aided design (CAD) seals for these reasons:~~
  - a. ~~Risks of misuse;~~
  - b. ~~The professional cannot delegate the responsibility to affix the seal to the professional's work; and~~
  - c. ~~Original plans and documents require personal original signatures (and original seals) as opposed to photocopies or facsimiles.~~

Final original plans and documents require personal original signatures of the professional in responsible charge of their preparation.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-21

# SEAL DESIGNS



1. Professional Engineer Stamp



2. Land Surveyor Stamp



3. Combined Professional Engineer and Land Surveyor Stamp

## CHAPTER 28-02.1-09

**28-02.1-09-02. Renewals.** Registration and certificates of authorization may be renewed as follows:

1. Every other year, beginning with 1999, the board shall mail renewal notices prior to December first to the last address of record for each registration and certificate holder advising of the amount of the renewal fee and the pending expiration date.
2. A late fee of twenty-five dollars shall be imposed on renewals postmarked after December thirty-first.
3. Renewal fees received will be acknowledged by returning to the registrant a wallet card bearing the registrant's name and registration number or a new certificate of authorization duly signed, each acknowledging renewal to the next date of expiration.
- 3- 4. Receipt of renewals prior to March thirty-first will ensure that the registrant's name and address will be published in the next roster.

**History:** Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-22

### **28-02.1-09-03. Reinstatements.**

1. A registrant or a holder of a certificate of authorization who has allowed the registrant's or holder's registration to lapse for more than two years, but less than five years, may become reinstated by paying the renewal fee for the current registration period plus two ~~years~~ years' back renewal fee. A holder of a certificate of authorization who has allowed the authorization to lapse for more than one year, but less than five years, may become reinstated by paying the current year renewal fee plus one year back renewal fee.
2. Registrations and certificates which have lapsed five years or more require reapplication updating all the required information of the applicant as if an original application. The board may require reexamination of registrants for all or a portion of the examination qualification requirements.

**History:** Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-22

CHAPTER 28-02.1-10

28-02.1-10-01. Examinations.

1. The engineering and land surveying examinations must be held in ~~April~~ the spring and ~~October~~ fall of each year, with the time, date, and place set by the board.
2. Orientation examinations (~~a take-home exam~~) for land surveyors ~~requires~~ require a score of eighty or greater to pass the examination. An examination pertaining to land surveying laws, procedures, and practices in North Dakota shall require a passing score determined by the board but shall not be less than seventy percent.
3. An applicant failing to pass a professional examination may take the next scheduled examination after six months by payment of the examination fee provided the applicant achieved a score of at least fifty. An applicant failing to pass a professional examination with a score of less than fifty may not apply for reexamination for one year from the date of such examination.
4. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation of a registrant whose registration has been subject to disciplinary action, an examination on the code of ethics may be required.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-19

**28-02.1-10-02. Fees.** Effective January 1, 1999, the following fees may not exceed:

Registration Fees

Professional engineer	\$ 50.00
Land surveyor	\$ 50.00
Partnership or corporation	\$100.00
Temporary permit	\$ 50.00

Examination fee (in addition to the registration and renewal fees) at board cost, including scoring and ~~five~~ ten dollars for postage and handling and proctoring.

Cost of administration of continuing education or professional competency programs will be assessed and billed annually to the professions registrant requesting these services. Billings will be separately identified apart from the renewal fees.

Renewal Fees

Professional engineer	\$100.00
Land surveyor	\$100.00
Professional engineer and land surveyor	\$190.00
Partnership or corporation	\$100.00

**History:** Effective January 1, 1988; amended effective August 1, 1994; November 1, 1998; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-18, 43-19.1-27

## CHAPTER 28-03.1-01

**28-03.1-01-01. General statement.** In order to establish and maintain a high standard of integrity, skills, and practice in the profession of engineering and land surveying, the code of ethics contained in this chapter is binding upon every person holding a certificate of registration as a professional engineer or land surveyor, and upon all agents, employees, officers, or partners.

This chapter is specifically designed to further safeguard the life, health, property, and public welfare of the citizens of North Dakota, and must be construed to be a reasonable exercise of the police power vested in the board of registration for professional engineers and land surveyors by virtue of North Dakota Century Code chapter 43-19.1, and as such the board can establish conduct, policy, and practices to be adopted.

~~Throughout--article-28-03.1,-the-term-"his"-is-used-to-designate-a person-in--a--nongender--context.~~ These rules are to be read and interpreted without regard to race, creed, or sex.

The engineer or land surveyor who holds a certificate of registration from the board is charged with having knowledge of the existence of this chapter for professional conduct as an engineer or land surveyor, and also must be deemed to be familiar with the provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege as opposed to a right, and the engineer or land surveyor must be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct.

All reference in this chapter to engineers and the profession of engineering must be deemed to include land surveyors and the practice of land surveying.

The engineer or land surveyor must be guided in all professional relations by the highest standards of integrity, and shall act in professional matters for each client or employer as a faithful agent or trustee.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-03. Standards of integrity.** The engineer or land surveyor will be guided in all one's professional relations by the highest standards of integrity,~~and.~~ The engineer or land surveyor will act in professional matters as a faithful agent or trustee for each client or employer as a faithful agent or trustee. The engineer or land surveyor:

1. Will give accurate estimates, reports, statements, and testimony.
2. Will advise one's client or employer when the engineer or land surveyor believes a project will not be successful.
3. Will not accept ~~outside--employment-to-the-detriment-of-the~~ engineer's-or-land-surveyor's-regular--work--or--interest;--or ~~without--the--consent--of--the--engineer's--or-land-surveyor's~~ employer compensation for services relating or pertaining to the same project from more than one party unless there is a unity of interest between or among the parties to the project and unless the engineer or land surveyor makes full disclosure and obtains the express consent of all parties from whom compensation will be received.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-05. Advertising.** The engineer or land surveyor, or both, may not make, publish, or cause to be made or published, any representation or statement concerning his the person's professional qualifications or those of his the person's partners, associates, firm, or organization which is in any way misleading, tends to mislead the recipient thereof, or the public, concerning his the person's engineering or land surveying, or both, education, experience, specializations, or other ~~engineering--or--land--surveying;--or--both;~~ qualifications.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-07. Opinion on engineering subject.** The engineer or land surveyor will express an opinion on an engineering or land surveying subject only when founded on adequate knowledge. The engineer or land surveyor will insist on the use of facts in reference to an engineering or land surveying project on a group discussion, public forum, or publication of articles.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-10. Disclosure of conflict of interest.** The engineer or land surveyor will endeavor to avoid a conflict of interest with one's employer or client, but when unavoidable, the engineer or land surveyor shall fully disclose the circumstances to the employer or client. The engineer or land surveyor will inform the client or

employer of any business connections, interest, or circumstances which may be deemed as influencing one's judgment or the quality of one's services to the client or employer. When in public service as a member, advisor, or employee of a governmental body or department, an engineer or land surveyor may not participate in considerations or actions with respect to services provided by the engineer or land surveyor or the engineer's or land surveyor's organization. An engineer or land surveyor may not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the engineer's or land surveyor's organization serves as a member.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-11. Compensation from other parties.** The engineer or land surveyor will not accept compensation, financial or otherwise, from more than one interested party for the same service. The engineer or land surveyor:

1. Will not accept financial or other considerations, including free engineering designs or land surveying plans, from material or equipment suppliers for specifying their product.
2. Will not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with the engineer's or land surveyor's clients or employer in connection with work for which the engineer or land surveyor is responsible.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-12. Solicitation of work.** The engineer and land surveyor shall solicit or accept only work on the basis of his the engineer's or land surveyor's qualifications.

1. The engineer and land surveyor may not offer to pay, either directly or indirectly, any commissions, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried position through employment agencies.
2. The engineer and land surveyor shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. The engineer and land surveyor may not solicit or submit proposals for professional services containing a false, fraudulent, misleading,

deceptive, or unfair statement or claim regarding the cost, quality, or extent of services to be rendered.

3. The engineer and land surveyor may not falsify or permit misrepresentation of ~~his~~ either the person's, or his the person's associates', academic or professional qualifications. ~~He~~ The engineer or land surveyor may not misrepresent or exaggerate ~~his~~ the person's degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or ~~his-or-their~~ the person's past accomplishments with the intent and purpose of enhancing ~~his~~ the person's qualifications and ~~his~~ work.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-13. Criticism--of--others** Reporting of unethical or illegal practice. If the engineer or land surveyor believes that another engineer or land surveyor is guilty of unethical or illegal practice, the engineer or land surveyor shall present such information to the proper authority for action.

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-16. Professional cooperation.** The engineer or land surveyor will cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers or land surveyors and students, and will endeavor to provide opportunity for the professional development and advancement of engineers or land surveyors under the engineer's or land surveyor's supervision. The engineer or land surveyor:

1. Will encourage one's engineering or land surveying employees' efforts to improve their education.
2. Will encourage one's engineering or land surveying employees to attend and present papers at professional and technical society meetings.
3. Will urge one's engineering or land surveying employees to become registered at the earliest possible date.
4. Will assign a professional engineer or land surveyor duties of a nature to utilize the engineer's or land surveyor's full training and experience, insofar as possible, and delegate lesser functions to subprofessionals or to technicians. The

engineer or land surveyor will provide a prospective engineering employee with complete information on working conditions and the employee's proposed status of employment, and after employment will keep the employee informed of any changes in them.

Guidelines setting forth the parameters for the principles of practice must be established from time to time. Reference materials setting forth those parameters of the principles of practice enumerated herein include, but are not limited to, the following:

"Ethical Problems in Engineering" - current edition  
Alger Christiansen and Olmsted  
John Wiley and Sons

"Opinions of the Board of Ethical Review"  
National Society of Professional Engineers

"Guide to Practice"  
American Society of Civil Engineers

"Canon of Ethics" - latest version  
Engineering Council on Professional Development

Guide for Ethical Conduct of Consulting Engineers  
Consulting Engineers Council

**History:** Effective January 1, 1988; amended effective April 1, 1999.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24



**TITLE 33**  
**State Department of Health**



MAY 1999

CHAPTER 33-20-01.1

**33-20-01.1-02. Applicability.** Any person who operates or proposes to operate any type of solid waste management system, unit, or facility and any person who transports solid waste, is subject to the provisions of this article.

1. This article does not apply to the following:
  - a. The management of hazardous waste at hazardous waste management units or facilities as defined by chapter 33-24-01;
  - b. Solid waste management units which do not receive solid waste after October 9, 1993, except closure standards apply;
  - c. ~~Agricultural waste generated by farming operations, unless handling of this waste by these operations is not in keeping with the purpose of this article~~ Recycled agricultural material;
  - d. The disposal of household waste generated by any individual who resides on unplatted land in unincorporated areas of this state, on that person's property, unless handling of this waste is not in keeping with the purpose of this article;
  - e. The beneficial use or reuse of materials, substances, energy, or other products derived from a resource recovery activity; or

f. Additional exemptions of certain requirements as specified in provisions of this article; or

g. Agricultural waste from a farming operation that is disposed on land owned by the farming operation and which is not likely to pollute the waters of the state.

2. Solid waste management units or facilities having permits on December 1, 1992, shall comply with section 33-20-03.1-04.

**History:** Effective December 1, 1992; amended effective May 1, 1999.

**General Authority:** NDCC 23-29-04

**Law Implemented:** NDCC 23-29-04, 23-29-07, 23-29-14

**33-20-01.1-03. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 23-29, except:

1. "Agricultural processing operation" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.
2. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.
- 2- 3. "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
- 3- 4. "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.
- 4- 5. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.
- 5- 6. "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.

- 6- 7. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, industrial waste, and special waste.
- 7- 8. "Compliance boundary" means the vertical planar surface that extends downward into the uppermost aquifer and that circumscribes the waste management units at which water quality standards or maximum concentration limits apply.
- 8- 9. "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.
- 9- 10. "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").
- 10- 11. "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.
- 11- 12. "Energy conversion facility" has the same meaning as in North Dakota Century Code subsection 5 of section 49-22-03, except that refining of liquid hydrocarbon products is excluded.
- 12- 13. "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.
- 13- 14. "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
15. "Farming operation" means the production or raising of crops or livestock. Production or raising of crops or livestock includes the following:
- a. Cultivating, growing, or harvesting agricultural crops;
  - b. Breeding, feeding, grazing, or finishing of livestock; or
  - c. Raising or producing poultry or unprocessed poultry products, unprocessed milk or dairy products, unprocessed livestock products such as wool, or unprocessed fruits, vegetables, or other horticultural products.

The term "farming operation" includes any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03 that recycles or applies its manure and other residual agricultural material to soils as recycled agricultural material, but does not include a concentrated or confined animal feeding operation that generates manure or other residual agricultural material that is discarded as agricultural waste. The term "farming operation" does not include any processing of crops, livestock, or other agricultural products by an agricultural processing operation.

- 14- 16. "Final cover" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.
- 15- 17. "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by a one-hundred-year flood.
- 16- 18. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
- 17- 19. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.
- 18- 20. "Gas condensate" means the liquid generated as a result of gas recovery processes at a landfill disposal unit.
- 19- 21. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
- 20- 22. "Hazardous waste" has the meaning given by North Dakota Century Code section 23-20.3-02 and further defined in chapter 33-24-02.
- 21- 23. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
- 22- 24. "Incinerator" has the meaning given by section 33-15-01-04.

- 23- 25. "Industrial waste" has the same meaning as in North Dakota Century Code section 23-29-03. Such waste may include, but is not limited to, residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; textile manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.
- 24- 26. "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; metal; tree branches; bottom ash from coal fired boilers; and waste coal fines from air pollution control equipment.
- 25- 27. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.
- 26- 28. "Landfill" has the meaning given by North Dakota Century Code section 23-29-03 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.
- 27- 29. "Lateral expansion" means a horizontal extension of the waste boundaries of an existing landfill disposal unit.
- 28- 30. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.
- 29- 31. "Leachate removal system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.
- 30- 32. "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees Celsius [77 degrees Fahrenheit].
- 31- 33. "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.

34. "Nutrient management plan" means a plan prepared by any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03, or by any agricultural processing operation. This plan shall be submitted to the department for approval and describe the method and schedule by which the recycled agricultural materials generated or stored by the operation are recycled or applied to the land at appropriate agronomic rates as nutrients or fertilizers, rather than discarded as agricultural waste. An approved nutrient management plan must address water pollution, odor, and other environmental and public health problems that are relevant because of size, location, or other environmental factors, and may include the following elements:
- a. Recycled agricultural material handling and storage, including construction and maintenance of buildings, feedlots, collection systems, storage systems with adequate storage and integrity, and diversion of runoff and flowing surface water from contact with the storage systems and the recycled agricultural material;
  - b. Land application of recycled agricultural material, including soils testing, transportation, timing and methods of application, and nutrient management;
  - c. Conservation management practices, including injection or tillage of the recycled agricultural materials into the soils, crop residue and pasture management practices, use of conservation buffers, and other conservation practices that prevent water pollution from land application of recycled agricultural materials;
  - d. Recordkeeping, including the place, date, and amount of recycled agricultural material applied per acre, plus records of any testing;
  - e. Feed management; and
  - f. Other utilization options where residual agricultural materials are recycled.
- 32- 35. "Operator" means the person responsible for the overall operation of a facility or part of a facility.
- 33- 36. "Owner" means the person who owns a facility or part of a facility.
- 34- 37. "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

- 35- 38. "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.
- 36- 39. "Processing" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.
- 37- 40. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
- 38- 41. "Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.

42. "Recycled agricultural material" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing or other similar agricultural activities. Recycled agricultural materials also include:

a. Material, including manure, generated by any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03 that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan; or

b. Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan.

Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.

39- 43. "Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.

40- 44. "Runoff" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.

- 41: 45. "Run-on" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.
- 42: 46. "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.
- 43: 47. "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.
- 44: 48. "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.
- 45: 49. "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.
- 46: 50. "Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal.
- 47: 51. "Transfer station" means a site or building used to transfer solid waste from a vehicle or a container, such as a rolloff box, into another vehicle or container for transport to another facility.
- 48: 52. "Treatment" means a method or process designed to change the physical, chemical, or biological character or composition of a solid waste or leachate so as to neutralize the waste or leachate or so as to render the waste or leachate safer for public health or environmental resources during transport, storage, or disposal. The term does not include resource recovery.
- 49: 53. "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
- 50: 54. "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.

**History:** Effective December 1, 1992; amended effective August 1, 1993; October 1, 1994; May 1, 1999.

**General Authority:** NDCC 23-29-04, 61-28-04

**Law Implemented:** NDCC 23-29-04, 61-28-04

**TITLE 37**  
**Department of Transportation**



MARCH 1999

**37-06-03-01. Authorized combinations of vehicles - Routes of operation.** The following combinations of vehicles may be operated on all North Dakota highways provided the overall length does not exceed seventy-five feet [22.86 meters]:

1. Any combination of two units.
2. A truck-tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a converter dolly and fifth wheel. This combination of vehicles is commonly referred to as an A-train or a double bottom.
3. A truck-tractor and semitrailer may draw a semitrailer. This combination of vehicles is commonly referred to as a B-train.
4. A--truck--properly--registered-and-designed-to-legally-carry-a gross--weight--of--more--than--twenty-four---thousand---pounds [10886.22--kilograms]--may--draw--two-trailers-or-semitrailers provided-both--trailers--or--semitrailers--are--equipped--with safety--chains--and-brakes-adequate-to-control-the-movement-of and-to-stop-and--hold--such--trailers--or--semitrailers.---The brakes-shall-be-designed-as-to-be-applied-by-the-driver-of-the truck--from--the--cab.---The--brakes--shall--be--designed--and connected--so--that--in--case--of--an-accidental-breakaway-the brakes-shall--be--automatically--applied--on--the--trailer--or semitrailer-that-breaks-loose.
5. A combination of four units consisting of a truck-tractor, semitrailer, and two trailers. A semitrailer used with a converter dolly is considered to be a trailer. This combination of vehicles is commonly referred to as triple trailers or a triple bottom.

6- 5. A motor vehicle drawing three motor vehicles attached to the towing motor vehicle by a triple saddle mount. In such a mount, the front wheels of the towed motor vehicle are mounted upon the bed of the towing vehicle, with any other towed motor vehicle being mounted in a like manner on the preceding motor vehicle.

**History:** Effective October 1, 1983; amended effective November 1, 1987; March 1, 1999.

**General Authority:** NDCC 39-12-04

**Law Implemented:** NDCC 39-12-04

## CHAPTER 37-06-04

**37-06-04-01. Authorized combinations of vehicles exceeding seventy-five feet.** The following combinations of vehicles exceeding seventy-five feet [22.86 meters] in overall length may be operated on those highways described in section 37-06-04-02:

1. Any combination of two units.
2. A truck-tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a converter dolly and fifth wheel. This combination of vehicles is commonly referred to as an A-train or a double bottom.
3. A truck-tractor and semitrailer may draw a semitrailer. This combination of vehicles is commonly referred to as a B-train.
4. A truck properly registered and designed to legally carry a gross weight of more than twenty-four thousand pounds [10886.22 kilograms] may draw two trailers or semitrailers provided both trailers or semitrailers are designed to legally carry gross weights of more than twenty-four thousand pounds [10886.22 kilograms], provided both trailers or semitrailers are equipped with safety chains and brakes adequate to control the movement of and to stop and hold such trailers or semitrailers. The brakes shall be designed as to be applied by the driver of the truck from the cab. The brakes shall be designed and connected so that in case of an accidental breakaway the brakes shall be automatically applied on the trailer or semitrailer that breaks loose.
5. A combination of four units consisting of a truck-tractor, semitrailer, and two trailers. A semitrailer used with a converter dolly is considered to be a trailer. This combination of vehicles is commonly referred to as triple trailers or a triple bottom.

**History:** Effective October 1, 1983; amended effective December 1, 1985; March 1, 1999.

**General Authority:** NDCC 39-12-04

**Law Implemented:** NDCC 39-12-04

MAY 1999

CHAPTER 37-06-04

**37-06-04-05. Signing requirement.** The last trailer in any three or four unit combination must have an-"OVERLENGTH" a "LONG LOAD" sign mounted on the rear. The "OVERLENGTH" "LONG LOAD" sign must be a minimum twelve inches [30.48 centimeters] in height and sixty inches [152.4 centimeters] in length. The lettering must be eight inches [20.32 centimeters] in height with one-inch brush strokes. The letters must be black on yellow background. A-"LONG-LOAD"-sign-may-be-used-in-lieu-of-the-overlength-sign.--Beginning-January-1,-1985,-the-"LONG-LOAD" sign-is-mandatory.

**History:** Effective October 1, 1983; amended effective May 1, 1999.

**General Authority:** NDCC 39-12-04

**Law Implemented:** NDCC 39-12-04

**TITLE 38**  
**Highway Patrol**



FEBRUARY 1999

CHAPTER 38-03-01

38-03-01-02. Adoption of regulations.

1. The following parts of Title 49, Code of Federal Regulations, including amendments, are adopted by reference:
- a. 1. Part 171 - General Information, Regulations and Definitions.
  - b. 2. Part 172 - Hazardous Materials Tables and Hazardous Materials Communications Regulations.
  - c. 3. Part 173 - Shippers - General Requirements for Shipments and Packagings.
  - d. 4. Part 177 - Carriage by Public Highway.
  - e. 5. Part 178 - Shipping Container Specifications.
  - 6. Part 180 - Qualification and Maintenance of Packagings.

**History:** Effective October 1, 1983; amended effective February 1, 1999.

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

**Law Implemented:** NDCC 39-21-44

## CHAPTER 38-03-02

### 38-03-02-02. Intrastate farm operations.

1. The transportation of an agricultural product other than a Class 2 material, over local roads between fields of the same farm, is exempted from the requirements of this chapter when:
  - a. It is transported by a farmer who is an intrastate private motor carrier; and
  - b. The movement of the agricultural product conforms to all other state statutes or rules in effect before July 1, 1998.
  
2. The transportation of an agricultural product to or from a farm, within one hundred fifty miles [241.40 kilometers] of the farm, is exempted from the requirements in subparts G and H of 49 CFR part 172 when:
  - a. It is transported by a farmer who is an intrastate private motor carrier.
  - b. The total amount of agricultural product being transported on a single vehicle does not exceed:
    - (1) Sixteen thousand ninety-four pounds [7300 kilograms] of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or
    - (2) Five hundred two gallons [1900 liters] for liquids or gases, or five thousand seventy pounds [2300 kilograms] for solids, of any other agricultural product.
  - c. The packaging conforms to the general packaging requirements of 49 CFR parts 173.24, 173.24A, and 173.24B.
  - d. Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of this chapter.
  - e. Formulated liquid agricultural products in specification packagings of fifty-eight gallons [220 liters] capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

f. See 49 CFR part 173.315(m) and North Dakota Administrative Code section 38-03-02-01 pertaining to nurse tanks of anhydrous ammonia.

g. See 49 CFR part 173.6 pertaining to materials of trade.

**History:** Effective February 1, 1999.

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

**Law Implemented:** NDCC 39-21-44

**STAFF COMMENT:** Chapter 38-03-03 contains all new material and is not underscored so as to improve readability.

**CHAPTER 38-03-03  
HAZARDOUS MATERIALS - PETROLEUM PRODUCTS**

Section  
38-03-03-01                      Petroleum Products - Nonspecification Cargo Tanks

**38-03-03-01. Petroleum products - Nonspecification cargo tanks.**

1. Notwithstanding requirements for specification packagings in 49 CFR subpart F of part 173 and parts 178 and 180, a nonspecification cargo tank motor vehicle having a capacity of less than three thousand five hundred gallons [13250 liters] may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subsection 3.
2. Notwithstanding requirements for specification packagings in 49 CFR subpart F of part 173 and parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons [450 liters], may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subsection 3.
3. Additional requirements. A packaging used under subsections 1 and 2 must:
  - a. Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;
  - b. Be operated in conformance with all other requirements of this state;
  - c. Be offered for transportation and transported in conformance with all other applicable requirements of subchapter a of 49 CFR;
  - d. Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant; and

- e. On and after July 1, 2000, a tank authorized under subsection 1 or 2 must conform to all requirements in part 180 (except for 180.405(g)) of 49 CFR in the same manner as required for a DOT specification MC306 cargo tank motor vehicle.

**History:** Effective September 23, 1998.

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

**Law Implemented:** NDCC 39-21-44

CHAPTER 38-04-01

**38-04-01-02. Adoption of regulations.**

1. The following parts of Title 49, Code of Federal Regulations, including amendments are adopted by reference:
- a. 1. Part 382 - Controlled Substances and Alcohol Use and Testing.
  - 2. Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
  - 3. Part 390 - Federal Motor Carrier Safety Regulations: General.
  - b. 4. Part 391 - Qualifications of Drivers.
  - e. 5. Part 392 - Driving of Motor Vehicles.
  - d. 6. Part 393 - Parts and Accessories Necessary for Safe Operation.
  - e. 7. Part 395 - Hours of Service of Drivers.
  - f. 8. Part 396 - Inspection, Repair and Maintenance.
  - f. 9. Part 397 - Transportation of Hazardous Materials; Driving.

**History:** Effective October 1, 1983; amended effective February 1, 1999.

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

**Law Implemented:** NDCC 39-21-46

## CHAPTER 38-06-02

### 38-06-02-02. Flagging, sign, and mirror requirements.

1. All overdimensional vehicles and loads must have minimum ~~eighteen-inch~~ twelve-inch by ~~eighteen-inch~~ twelve-inch [~~457.2-millimeters~~ 304.8-millimeters by ~~457.2-millimeters~~ 304.8-millimeters] red or bright orange flags displayed on the traffic sides front and rear.
2. When the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length, there must be a minimum ~~eighteen-inch~~ by ~~eighty-four-inch~~ [~~457.2-millimeters~~ by ~~2133.6-millimeters~~] OVERSIZE LOAD sign on the rear. The lettering must be black on yellow background. Letters must be at least ten inches [254 millimeters] high with one and five-eighths-inch [39.37-millimeters] brush stroke. When the movement is overlength only, exceeding seventy-five feet [22.86 meters] in overall length, a LONG LOAD sign that is a minimum twelve inches by sixty inches [304.8 millimeters by 1524 millimeters] in size may be used in lieu of the OVERSIZE LOAD sign. The lettering must be black on yellow background. The letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4-millimeters] brush stroke. The sign must be covered or removed when the movement is not overdimensional.
3. The towing vehicle must have two outside mirrors, one on each side, to reflect a rear view of two hundred feet [60.96 meters] to the driver.

**History:** Effective January 1, 1988; amended effective February 1, 1999.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

### 38-06-02-07. Travel restrictions.

1. Single trip permits may not be issued for overdimensional movements between sunset and sunrise unless otherwise authorized by the superintendent.
2. Single trip permits for overwidth exceeding sixteen feet [4.88 meters]; ~~or overlength exceeding one hundred ten feet~~ [~~33.53 meters~~]; may not be issued authorizing movements on Saturday after twelve noon, all day Sunday, and on holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
  - a. When any above-named holiday is on a Sunday, the following Monday is the holiday.

- b. When any above-named holiday is on a Saturday, the preceding Friday is the holiday.
  - c. No overwidth permit exceeding sixteen feet [4.88 meters], ~~or overlength permit exceeding one hundred ten feet [33.53 meters]~~, will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.
3. Single trip permits may not authorize movements when inclement weather prevails, highways are slippery, or when visibility is poor.
  4. Single trip permits do not authorize travel on shoulders of road.
  5. A single trip permit is required for each movement that is overdimensional or overweight.
  6. A minimum distance of one thousand feet [304.80 meters] is required between vehicles in a convoy of two or more vehicles.

**History:** Effective January 1, 1988; amended effective August 1, 1993; February 1, 1999.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

## CHAPTER 38-06-03

**38-06-03-01. Permit fees.** The following fees are to be effective January 1, 1988; in addition to those found in North Dakota Century Code section 39-12-02:

1. The fee for registered motor vehicles hauling or towing overdimensional or overweight, or both, loads is ten dollars per each single trip permit.
2. The fee for registered motor vehicles that exceed legal size or legal weight, or both, limitations is ten dollars per each single trip permit.
3. The fee for nonregistered self-propelled special mobile equipment that exceeds legal weight limitations is fifteen dollars per each single trip permit.
4. The fee for nonregistered self-propelled special mobile equipment that exceeds legal size limitations only is ten dollars per each single trip permit.
5. 1. The fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.
6. 2. The fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip permit movement approval form. If the permit is issued on official receipt/permit, SFN 3507, the fee is ten dollars.
7. 3. The fee for vehicles hauling overwidth loads of hay bales or haystacks, overwidth self-propelled fertilizer spreaders, and overwidth hay grinders is fifty dollars per year.
8. The fee when movement requires department of transportation engineer approval is fifteen dollars in addition to permit fee.
9. There is an additional heavyweight fee of seventy dollars per ton for all weight in excess of one hundred fifty thousand five hundred pounds [47,910 kilograms] gross vehicle weight but not to exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The fee may be prorated on a monthly basis and does not apply on those motor vehicles which are North Dakota titled and registered.

10- 4. There is a graduated fee schedule for overweight single trip movements exceeding one hundred fifty thousand pounds [68035 kilograms] gross vehicle weight.

<u>Gross Vehicle Weight</u>	<u>Permit Fee</u>
150,001 - 160,000 lbs.	\$30
160,001 - 170,000 lbs.	\$40
170,001 - 180,000 lbs.	\$50
180,001 - 190,000 lbs.	\$60
190,001 lbs. and over	\$70

5. There is an additional ton/mile fee of \$.05 per ton per mile on all those movements that exceed two hundred thousand pounds [90718 kilograms] gross vehicle weight. The following ton/mile fee is only assessed upon that portion of gross vehicle weight exceeding the maximum legal gross weight of one hundred fifty thousand pounds [67,500 kilograms] gross vehicle weight.

<u>Gross-Vehicle-Weight</u>	<u>Ton/Mile-Fee</u>	<u>Minimum</u>
200,001 to 210,000	\$.05	\$50.00
210,001 to 220,000	.10	50.00
220,001 to 230,000	.15	50.00
230,001 to 240,000	.20	50.00
240,001 to 250,000	.25	50.00
250,001 to 275,000	.50	100.00
275,001 to 300,000	2.00	200.00
300,001 to 325,000	3.00	350.00
325,001 to 350,000	4.00	500.00
350,001 to 400,000	7.00	1,000.00
400,001 to 450,000	10.00	2,000.00
450,001 to 500,000	15.00	3,000.00
500,001 to 550,000	20.00	5,000.00
550,001 to 600,000	30.00	7,500.00
600,001 to 650,000	40.00	10,000.00
650,001 to 700,000	50.00	15,000.00
700,001 to 750,000	75.00	25,000.00
750,001 or more	100.00	Minimum one-mile

11- 6. On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of thirty cents per mile [kilometer] and thirty dollars per hour.

**History:** Effective January 1, 1988; amended effective May 1, 1988; January 1, 1992; August 1, 1993; February 1, 1999.

**General Authority:** NDCC 39-12-02, 39-12-04

**Law Implemented:** NDCC 39-12-02

## CHAPTER 38-08-04

**38-08-04-01. Sponsoring agency requirements.** An approved sponsoring agency shall:

1. Make application to the administration for approval if there are any proposed additions or deletions to an approved course.
2. Perform all administrative functions in connection with the course.
3. Upon satisfactory completion of the course, provide each participant with a certificate of course completion approved by the superintendent. Completion records must be maintained for a period of three years from completion date.
4. Provide or train, or both, instructors to conduct courses qualifying for insurance premium reduction.
5. Conduct the course in accordance with the description represented to the superintendent.
6. ~~Provide each participant at the time of enrollment an approved printed statement that indicates an insurer may provide a reduction in rates for motor vehicle personal injury and property damage to an insured who is at least fifty-five years of age and within the last two years has completed successfully a course in accident prevention approved by the superintendent.~~ Provide each participant at the time of enrollment an approved printed statement that indicates an insurer may provide a reduction in premium charges for motor vehicle personal injury and property damage to an insured for at least a two-year period following the participant's successful completion of a motor vehicle accident prevention course. A driver fifty-five years of age or older who successfully completes an approved motor vehicle accident prevention course is entitled to a three-year insurance premium reduction.
7. Provide the superintendent, upon request, with a schedule of class dates, times, and locations.
8. Authorize the superintendent to audit the records of the approved course and to monitor and evaluate any and all portions of the course including the classroom facility, use of instructional material, and the presentation of the course.

**History:** Effective December 1, 1988; amended effective February 1, 1999.

**General Authority:** NDCC 26.1-25-04.1

**Law Implemented:** NDCC 26.1-25-04.1



**TITLE 45**  
**Insurance, Commissioner of**



DECEMBER 1998

CHAPTER 45-03-15

**45-03-15-03.** Diskette Annual statement filing. Every insurance company operating in more than one state shall file all annual and quarterly statements ~~on--diskette~~ with the national association of insurance commissioners, through media acceptable to the commissioner, unless the commissioner makes a specific finding that an insurer, or type of insurer, is exempt from this filing requirement.

**History:** Effective October 1, 1995; amended effective April 1, 1996; December 1, 1998.

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

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

**45-03-15-04.** Acceptable media for annual statement filing. The following media are acceptable to the commissioner for the filing of annual and quarterly statements with the national association of insurance commissioners and every insurance company subject to the requirements of section 45-03-15-03 shall use one of these media in making the filings required by that section:

1. Diskette; or
2. Electronic transmission of data, including the internet.

**History:** Effective December 1, 1998.

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

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1



FEBRUARY 1999

CHAPTER 45-06-01.1

**45-06-01.1-02. Definitions.** For purposes of this chapter:

1. "Applicant" means:
  - a. In the case of an individual medicare supplement policy, the person who seeks to contract for insurance benefits; and
  - b. In the case of a group medicare supplement policy, the proposed certificate holder.
2. "Bankruptcy" means when a medicare+choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.
3. "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement policy.
4. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.
5. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three days.

6. a. "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

- (1) A group health plan;
- (2) Health insurance coverage;
- (3) Part A or part B of title XVIII of the Social Security Act (medicare);
- (4) Title XIX of the Social Security Act (medicaid), other than coverage consisting solely of benefits under section 1928;
- (5) 10 U.S.C. 55 (CHAMPUS);
- (6) A medical care program of the Indian health service or of a tribal organization;
- (7) A state health benefits risk pool;
- (8) A health plan offered under 5 U.S.C. 89 (Federal Employees Health Benefits Program);
- (9) A public health plan as defined in federal regulations; and
- (10) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

b. "Creditable coverage" does not include one or more, or any combination of, the following:

- (1) Coverage only for accident or disability income insurance, or any combination thereof;
- (2) Coverage issued as a supplement to liability insurance;
- (3) Liability insurance, including general liability insurance and automobile liability insurance;
- (4) Workers compensation or similar insurance;
- (5) Automobile medical payment insurance;
- (6) Credit-only insurance;
- (7) Coverage for onsite medical clinics; and
- (8) Other similar insurance coverage, specified in federal regulations under which benefits for medical

care are secondary or incidental to other insurance benefits.

c. "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

- (1) Limited scope dental or vision benefits;
- (2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
- (3) Such other similar, limited benefits as are specified in federal regulations.

d. "Creditable coverage" does not include the following benefits if offered as independent, noncoordinated benefits:

- (1) Coverage only for a specified disease or illness; and
- (2) Hospital indemnity or other fixed indemnity insurance.

e. "Creditable coverage" does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

- (1) Medicare supplement health insurance as defined under section 1882(g)(1) of the Social Security Act;
- (2) Coverage supplemental to the coverage provided under 10 U.S.C. 55; and
- (3) Similar supplemental coverage provided to coverage under a group health plan.

7. "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. 1002 (Employee Retirement Income Security Act).

8. "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

- a. Any capital and surplus required by law for its organization; or
- b. The total par or stated value of its authorized and issued capital stock.

2- 9. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state medicare supplement policies or certificates.

10. "Medicare" means the "Health Insurance for the Aged Act," title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

11. "Medicare+choice plan" means a plan of coverage for health benefits under medicare part C as defined in [refer to definition of medicare+choice plan in section 1859 found in title IV, subtitle A, chapter 1 of Pub. L. 105-33], and includes:

a. Coordinated care plans which provide health care services, including health maintenance organization plans, with or without a point-of-service option; plans offered by provider-sponsored organizations; and preferred provider organization plans;

b. Medical savings account plans coupled with a contribution into a medicare+choice medical savings account; and

c. Medicare+choice private fee-for-service plans.

12. "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act (42 U.S.C. 1395 et seq.) or an issued policy under the demonstration project specified in 42 U.S.C. 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare.

3- 13. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

14. "Secretary" means the secretary of the United States department of health and human services.

**History:** Effective January 1, 1992; amended effective August 27, 1998.

**General Authority:** NDCC 26.1-36.1-02(1)(2); 26.1-36.1-03

**Law Implemented:** NDCC 26.1-36.1

**45-06-01.1-07. Standard medicare supplement benefit plans.**

1. An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in subsection 2 of section 45-06-01.1-06.
2. No groups, packages, or combinations of medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in subdivision k of subsection 3 of section 45-06-01.1-06 and in section 45-06-01.1-08.
3. Benefit plans must be uniform in structure, language, designation, and format to the standard benefit plans "A" through "J" listed in this section and conform to the definitions in section 45-06-01.1-02 and contained in North Dakota Century Code section 26.1-36.1-01. Each benefit must be structured in accordance with the format provided in subsections 2 and 3 of section 45-06-01.1-06 and list the benefits in the order shown in this section. For purposes of this section, "structure, language, and format" means style, arrangement, and overall content of a benefit.
4. An issuer may use, in addition to the benefit plan designations required in subsection 3, other designations to the extent permitted by law.
5. Makeup of benefit plans:
  - a. Standardized medicare supplement benefit plan "A" is limited to the basic (core) benefits common to all benefit plans, as defined in subsection 2 of section 45-06-01.1-06.
  - b. Standardized medicare supplement benefit plan "B" may include only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible as defined in subdivision a of subsection 3 of section 45-06-01.1-06.
  - c. Standardized medicare supplement benefit plan "C" may include only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, medicare part B deductible and medically necessary emergency care in a foreign country as defined in subdivisions a, b, c, and h of subsection 3 of section 45-06-01.1-06, respectively.
  - d. Standardized medicare supplement benefit plan "D" may include only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country

and the at-home recovery benefit as defined in subdivisions a, b, h, and j of subsection 3 of section 45-06-01.1-06, respectively.

- e. Standardized medicare supplement benefit plan "E" may include only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in subdivisions a, b, h, and i of subsection 3 of section 45-06-01.1-06, respectively.
- f.
  - (1) Standardized medicare supplement benefit plan "F" may include only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, the skilled nursing facility care, the medicare part B deductible, one hundred percent of the medicare part B excess charges, and medically necessary emergency care in a foreign country as defined in subdivisions a, b, c, e, and h of subsection 3 of section 45-06-01.1-06, respectively.
  - (2) Standardized medicare supplement benefit high deductible plan "F" includes only the following: one hundred percent of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, the medicare part B deductible, one hundred percent of the medicare part B excess charges, and medically necessary emergency care in a foreign country as defined in subdivisions a, b, c, e, and h of subsection 3 of section 45-06-01.1-06, respectively. The annual high deductible plan "F" deductible consists of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan "F" policy, and are in addition to any other specific benefit deductibles. The annual high deductible plan "F" deductible is one thousand five hundred dollars for 1998 and 1999 and must be based on the calendar year. It must be adjusted annually thereafter by the secretary to reflect the change in the consumer price index for all urban consumers for the twelve-month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars.
- g. Standardized medicare supplement benefit plan "G" may include only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the

medicare part A deductible, skilled nursing facility care, eighty percent of the medicare part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in subdivisions a, b, d, h, and j of subsection 3 of section 45-06-01.1-06, respectively.

- h. Standardized medicare supplement benefit plan "H" may consist of only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in subdivisions a, b, f, and h of subsection 3 of section 45-06-01.1-06, respectively.
- i. Standardized medicare supplement benefit plan "I" may consist of only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, one hundred percent of the medicare part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in subdivisions a, b, e, f, h, and j of subsection 3 of section 45-06-01.1-06, respectively.
- j. (1) Standardized medicare supplement benefit plan "J" may consist of only the following: The core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, medicare part B deductible, one hundred percent of the medicare part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in subdivisions a, b, c, e, g, h, i, and j of subsection 3 of section 45-06-01.1-06, respectively.

(2) Standardized medicare supplement benefit high deductible plan "J" consists of only the following: one hundred percent of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in subsection 2 of section 45-06-01.1-06, plus the medicare part A deductible, skilled nursing facility care, medicare part B deductible, one hundred percent of the medicare part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit, and at-home recovery benefit as defined in subdivisions a, b, c, e, g, h, i, and j of

subsection 3 of section 45-06-01.1-06, respectively. The annual high deductible plan "J" deductible consists of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan "J" policy, and are in addition to any other specific benefit deductibles. The annual deductible is one thousand five hundred dollars for 1998 and 1999 and must be based on a calendar year. It must be adjusted annually thereafter by the secretary to reflect the change in the consumer price index for all urban consumers for the twelve-month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars.

**History:** Effective January 1, 1992; amended effective July 1, 1994; August 27, 1998.

**General Authority:** NDCC 26.1-36.1-02(1)(2); 26.1-36.1-03

**Law Implemented:** NDCC 26.1-36.1-02

#### **45-06-01.1-09. Open enrollment.**

1. Any issuer may not deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, or discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both sixty-five years of age or older and is enrolled for benefits under medicare part B. Each medicare supplement policy and certificate currently available from an insurer must be made available to all applicants who qualify under this subsection without regard to age.
2.
  - a. If an applicant qualifies under subsection 1 and submits an application during the time period referenced in subsection 1 and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer may not exclude benefits based on a preexisting condition.
  - b. If the applicant qualifies under subsection 1 and submits an application during the time period referenced in subsection 1 and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this subsection.

3. Except as provided in subsection 1 of section 45-06-01.1-20, subsection 1 may not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

**History:** Effective January 1, 1992; amended effective July 8, 1997; August 27, 1998.

**General Authority:** NDCC 26.1-36.1-02(1)(2); 26.1-36.1-03

**Law Implemented:** NDCC 26.1-36.1-02

45-06-01.1-09.1. Guaranteed issue for eligible persons.

1. Guaranteed issue.

a. Eligible persons are those individuals described in subsection 2 who apply to enroll under the policy not later than sixty-three days after the date of termination of enrollment described in subsection 2, and who submit evidence of the date of termination or disenrollment with the application for medicare supplement policy.

b. With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection 3 that is offered and is available for issuance to new enrollees by the issuer, may not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and may not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

2. Eligible persons. An eligible person is an individual described in any of the following subdivisions:

a. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan;

b. The individual is enrolled with a medicare+choice organization under a medicare+choice plan under part C of medicare, and any of the following circumstances apply:

- (1) The organization's or plan's certification under this part has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;
- (2) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;
- (3) The individual demonstrates, in accordance with guidelines established by the secretary, that:
  - (a) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or
  - (b) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provision in marketing the plan to the individual; or
- (4) The individual meets such other exceptional conditions as the secretary may provide;

c. (1) The individual is enrolled with:

- (a) An eligible organization operating under a contract under section 1876 (medicare risk or cost);
- (b) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;
- (c) An organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan); or
- (d) An organization under a medicare select policy;  
and

- (2) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under subdivision b of subsection 2;
- d. The individual is enrolled under a medicare supplement policy and the enrollment ceases because:
- (1) (a) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or
- (b) Of other involuntary termination of coverage or enrollment under the policy;
- (2) The issuer of the policy substantially violated a material provision of the policy; or
- (3) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;
- e. (1) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any medicare+choice plan under part C of medicare, any eligible organization under a contract under section 1876 (medicare risk or cost), any similar organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a medicare select policy; and
- (2) The subsequent enrollment under paragraph 1 is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act; or
- f. The individual, upon first becoming enrolled in medicare part B for benefits at age sixty-five or older, enrolls in a medicare+choice plan under part C of medicare, and disenrolls from the plan by not later than twelve months after the effective date of enrollment.
3. Products to which eligible persons are entitled. The medicare supplement policy to which eligible persons are entitled under:
- a. Subdivisions a, b, c, and d of subsection 2 is a medicare supplement policy that has a benefit package classified as plan A, B, C, or F offered by any issuer.

b. Subdivision e of subsection 2 is the same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subdivision a of subsection 3.

c. Subdivision f of subsection 2 includes any medicare supplement policy offered by any issuer.

4. Notification provisions:

a. At the time of an event described in subsection 2 because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of the issuers of medicare supplement policies under subsection 1. Such notice shall be communicated contemporaneously with the notification of termination.

b. At the time of an event described in subsection 2 because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of issuers of medicare supplement policies under subsection 1. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

**History:** Effective August 27, 1998.

**General Authority:** NDCC 26.1-36.1-02; 26.1-36.1-03

**Law Implemented:** NDCC 26.1-36.1-02

MAY 1999

CHAPTER 45-04-08

**45-04-08-01. Definitions.** As used in this chapter:

1. "1983 GAM Table" means that mortality table developed by the society of actuaries committee on annuities and adopted as a recognized mortality table for annuities in December 1983 by the national association of insurance commissioners.
2. "1983 Table 'a'" means that mortality table developed by the society of actuaries committee to recommend a new mortality basis for individual annuity valuation and adopted as a recognized mortality table for annuities in June 1982 by the national association of insurance commissioners.
3. "1994 GAR Table" means that mortality table developed by the society of actuaries group annuity valuation table task force and shown at XLVII transactions of the society of actuaries 866-867 (1995).
4. "Annuity 2000 Mortality Table" means that mortality table developed by the society of actuaries committee on life insurance research and shown at XLVII transactions of the society of actuaries 240 (1995).

**History:** Effective January 1, 1985; amended effective September 1, 1999.

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

**Law Implemented:** NDCC 26.1-35

**45-04-08-02. Individual annuity or pure endowment contracts.**

1. The Except as provided in subsections 2 and 3, 1983 Table "a" is recognized and approved as an individual mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1983.
2. The Except as provided in subsection 3, 1983 Table "a" is to be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1986.
3. Except as provided in subsection 4, the Annuity 2000 Mortality Table must be used for determining the minimum standard of valuation of any individual annuity or pure endowment contract issued on or after September 1, 1999.
4. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after September 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:
  - a. Settlements of various forms of claims pertaining to court settlements or out-of-court settlements from tort actions;
  - b. Settlements involving similar actions such as workers' compensation claims; or
  - c. Settlements of long-term disability claims when a temporary or life annuity has been used in lieu of continuing disability payments.

**History:** Effective January 1, 1985; amended effective September 1, 1999.

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

**Law Implemented:** NDCC 26.1-35

**45-04-08-03. Group annuity or pure endowment contracts.**

1. The Except as provided in subsections 2 and 3, the 1983 GAM Table and the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, either-table any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1983, under a group annuity or pure endowment contract.
2. The Except as provided in subsection 3, either the 1983 GAM Table is-to or the 1994 GAR Table must be used for determining the minimum standard of valuation for any annuity or pure

endowment purchased on or after ~~January 1, 1986~~ September 1, 1999, under a group annuity or pure endowment contract.

3. The 1994 GAR Table must be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after September 1, 1999, under a group annuity or pure endowment contract.

**History:** Effective January 1, 1985; amended effective September 1, 1999.

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

**Law Implemented:** NDCC 26.1-35

45-04-08-03.1. Application of the 1994 GAR Table. In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the  $q_x^{1994}$  and  $AA_x$  are as specified in the 1994 GAR Table.

**History:** Effective September 1, 1999.

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

**Law Implemented:** NDCC 26.1-35



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



**NOVEMBER 1998**

**STAFF COMMENT:** Article 50-04 contains all new material and is not underscored so as to improve readability.

**ARTICLE 50-04**

**CONTINUING MEDICAL EDUCATION**

Chapter  
50-04-01 Continuing Medical Education Standards

**CHAPTER 50-04-01  
CONTINUING MEDICAL EDUCATION STANDARDS**

Section	
50-04-01-01	Requirements
50-04-01-02	Exceptions
50-04-01-03	Credits Accepted
50-04-01-04	Compliance

**50-04-01-01. Requirements.** Except as is otherwise specified in this chapter, every physician licensed to practice medicine in North Dakota shall complete no less than sixty hours of board-approved continuing medical education (CME) every three years. One hour of credit will be allowed for each clock hour of participation in approved continuing medical education activities.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 43-17-27.1

**Law Implemented:** NDCC 43-17-27.1

**50-04-01-02. Exceptions.** The following physicians are not required to meet the requirements of this chapter.

1. Physicians who are enrolled in full-time graduate medical education programs (residencies and fellowships) which are accredited by the accreditation council on graduate medical education or the American osteopathic association.
2. Physicians who hold a locum tenens permit or a special license and physicians who have not renewed their licenses for the first time since being granted a regular permanent license by the board.
3. Physicians who have retired from the active practice of medicine. This exception is available only to retired physicians who have completely and totally withdrawn from the practice of medicine. Any physician seeking to be excused from completing CME requirements under this subsection must submit an affidavit to the board of medical examiners (on the board's form) certifying that the physician will render no medical services during the term of the next CME reporting period.
4. The board may grant an extension of time or other waiver to a licensee who, because of prolonged illness or other extenuating circumstances, has been unable to meet the CME requirements.

**History:** Effective November 1, 1998.

**General Authority:** NDCC 43-17-27.1

**Law Implemented:** NDCC 43-17-27.1

**50-04-01-03. Credits accepted.** The board accepts the following as meeting its requirements for board approval.

1. American medical association (AMA) physician's recognition award category 1 credit certified by continuing education providers who are accredited by:
  - a. The accreditation council for continuing medical education (ACCME); or
  - b. Organizations recognized by the ACCME as accrediters of CME for physicians.
2. American osteopathic association (AOA) category 1 credit certified by continuing education providers who are accredited by the AOA.

3. American academy of family physicians prescribed credit.
4. Courses approved by the royal college of physicians and surgeons of Canada at a maintenance of competence rating of 1.5 or greater.
5. Other courses approved by the North Dakota state board of medical examiners as being equivalent to AMA or AOA category 1 credit.

Except in the case of any requests submitted pursuant to subsection 5, it is the responsibility of the licensee to verify an appropriate credit designation with the source of the program, not with the board. All licensees are encouraged to verify an appropriate credit designation before taking any particular course.

**History:** Effective November 1, 1998.

**General Authority:** NDCC 43-17-27.1

**Law Implemented:** NDCC 43-17-27.1

#### **50-04-01-04. Compliance.**

1. All physicians will periodically be required to answer questions on the board's annual license renewal forms to establish compliance, or eligibility for an exception, pursuant to this chapter. Physicians whose surnames begin with letters A through H shall report their CME credits to the board in the year 2001 and every third year thereafter. Physicians whose surnames begin with letters I through O shall report their CME credits to the board in the year 2002 and every third year thereafter. Physicians whose surnames begin with letters P through Z shall report their CME credits to the board in the year 2003 and every third year thereafter. Physicians are not required to provide additional documentation of compliance with continuing education requirements unless specifically requested to do so by the board.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than one year but less than two full years will be required to demonstrate completion of twenty hours of board-approved CME credits during that physician's initial CME reporting period.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than two years but less than three full years will be required to demonstrate completion of forty hours of board-approved CME during that physician's initial CME reporting period.

False statements regarding satisfaction of continuing education requirements on the renewal form or on any documents connected with the practice of medicine may subject the licensee to disciplinary action by the board.

2. Each year the board will audit randomly selected physicians to monitor compliance with the continuing medical education requirements. Any physician so audited will be required to furnish documentation of compliance including the name of the accredited CME provider, name of the program, hours of continuing medical education completed, dates of attendance, evidence of credit designation (i.e. category 1 designation, prescribed credit designation, etc.) and verification of attendance. Any physician who fails to provide verification of compliance with the CME requirements will be subject to revocation of licensure.
3. In order to facilitate the board's audits, every physician is required to maintain a record of all CME activities in which the physician has participated. Every physician must maintain those records for a period of at least one year following the time when those CME activities were reported to the board.

**History:** Effective November 1, 1998.

**General Authority:** NDCC 43-17-27.1

**Law Implemented:** NDCC 43-17-27.1

APRIL 1999

CHAPTER 50-02-12

**STAFF COMMENT:** Chapter 50-02-12 contains all new material and is not underscored so as to improve readability.

CHAPTER 50-02-12  
NOTICE OF DENIAL OR LIMITATION OF LICENSURE

Section  
50-02-12-01                      Notice of Denial or Limitation of Licensure

**50-02-12-01. Notice of denial or limitation of licensure.** In the event the board makes an initial determination that an applicant does not meet the requirements for licensure, or that an applicant should be granted a limited or conditioned license, the board shall promptly give the applicant notice, personally or by certified mail, that it has made an informal decision to deny the application or to place conditions or limitations on the applicant's license. The board shall also advise the applicant as follows:

1. The applicant has the right to have the merits of the application considered at a formal hearing in accordance with the provisions of the North Dakota Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.
2. To secure a formal hearing on the merits of the application, the applicant must contact the board to request the hearing within sixty days of being given notice of the board's informal decision.

In the event an applicant does not request a formal hearing within sixty days of the date on which the applicant is given notice that the board has made an informal decision to deny the application or to place conditions or limitations on the applicant's license, then the board's informal decision will become the final order of the board.

**History:** Effective April 1, 1999.

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

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

CHAPTER 50-03-01

50-03-01-12. Physician's delegation to qualified person not restricted. ~~Nothing--in--this--chapter--shall--limit--or--prevent--any physician--from--delegating--to--a--qualified-person-any-acts,-tasks,-or functions-which-are-otherwise-permitted-by-law-or-established-by-custom-~~  
Repealed effective April 1, 1999.

General Authority: NDCC-43-17-13  
Law Implemented: NDCC-43-17-02{10}



**TITLE 51**  
**Milk Marketing Board**



APRIL 1999

CHAPTER 51-03-02

**51-03-02-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing.** Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive Secretary  
North Dakota Milk Stabilization Board  
206 1/2 North Sixth Street  
Bismarck, ND 58505

**51-03-02-12.2. Minimum dock pickup provisions - Market area 1.** Market area number 1 will have a minimum dock pickup price list of twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) less an additional two percent prompt payment. Prices will change as per section 51-03-02-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is contracted with a third party or is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment, whether owned or contracted,

must comply with regulations defined by federal and North Dakota state agencies.

3. This program ~~shall--only~~ will be available to a any single retail ownership and no combination of--retail--ownerships--or partnerships--arrangements--among--several--retailers--will--be permitted place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within ~~two weeks~~ fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.
7. ~~Personnel~~ Processor personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders, ~~to~~ shall be charged at wholesale price less appropriate volume discount.
10. All contracts between processors and retailers under this program shall:
  - a. Require delivery at destination being the retailer's place of business;
  - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
  - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of forty-five full cases to each processor to qualify for the dock pickup program. Deliveries of less than forty-five full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.

13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processors.

**History:** Effective September 1, 1996; amended August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

**51-03-02-18. Effective date.** These rules are effective at 12:01 a.m., ~~September 1, 1996~~ August 31, 1998, and all prior stabilization plans for market area number 1 are hereby repealed.

**History:** Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

## CHAPTER 51-03-03

**51-03-03-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing.** Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive Secretary  
North Dakota Milk Stabilization Board  
206 1/2 North Sixth Street  
Bismarck, North Dakota 58505

**51-03-03-12.1. Minimum dock price for market area 8.** Market area number 8 (Wahpeton) will have a minimum nondelivered dealer price list (dock price) of twenty-three percent off market area number 8 minimum established wholesale price list (except cultured products) less additional two percent prompt pay. Prices will change as per section 51-03-03-06. The following stipulations apply to receive this dock price.

1. Hauling of milk products must be done with refrigerated truck equipment that is owned by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment must comply with rules and regulations defined by federal and North Dakota state agencies.
2. Volume of milk products must equal at least one hundred thousand gallons [378541.18 liters] per year from all sources per store. A person or corporation who owns more than one store can total purchases from all stores to meet one hundred thousand gallons [378541.18 liters].
3. All orders must be preordered prior to pickup.
4. No in-store service, i.e., cleaning cases, stamping products, etc.
5. Personnel for store resets will be limited to dairy case setting only.
6. No returns on merchandise, except when the product is found to be damaged or defective at time of pickup.
7. Delivery of the product by processor or distributor due to incorrect ordering by customer or special orders, to be charged at wholesale price less appropriate volume discount.

8. On all charge sales by retailer not paid for within ~~two-weeks~~ fourteen days from the statement date, the processor or distributor will charge retailer the difference between dock price and wholesale price.

**History:** Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

**51-03-03-13.1. Minimum dock pickup provisions - Market areas 2, 5, 7, and 8.** Market areas numbers 2, 5, 7, and 8 will have a minimum dock pickup price list of twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) less an additional two percent prompt payment. Prices will change as per section 51-03-03-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is contracted with a third party or is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment, whether owned or contracted, must comply with regulations defined by federal and North Dakota state agencies.
3. This program ~~shall only~~ will be available to a any single retail ownership and no combination of retail ownerships or partnerships arrangements among several retailers will be permitted place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within ~~two-weeks~~ fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.
7. ~~Personnel~~ Processor personnel for store resets will be limited to dairy case setting only.

8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders, ~~to~~ shall be charged at wholesale price less appropriate volume discount.
10. All contracts between processors and retailers under this program shall:
  - a. Require delivery at destination being the retailer's place of business;
  - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
  - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of forty-five full cases to each processor to qualify for the dock pickup program. Deliveries of less than forty-five full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.
13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processors.

**History:** Effective September 1, 1996; amended effective August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

**51-03-03-19. Effective date.** These rules are effective at 12:01 a.m., ~~September 1, 1996~~ August 31, 1998, and all prior stabilization plans for market areas numbers 2, 5, 7, and 8 are hereby repealed.

**History:** Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

## CHAPTER 51-03-04

**51-03-04-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing.** Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Executive Secretary  
North Dakota Milk Stabilization Board  
206 1/2 North Sixth Street  
Bismarck, ND 58505

**51-03-04-13.1. Minimum dock pickup provisions - Market areas 3, 4, and 6.** Market areas numbers 3, 4, and 6 will have a minimum dock pickup price list of twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) less an additional two percent prompt payment. Prices will change as per section 51-03-04-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is contracted with a third party or is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment, whether owned or contracted, must comply with regulations defined by federal and North Dakota state agencies.
3. This program ~~shall only~~ will be available to a any single retail ownership and no combination of retail ownerships or partnerships arrangements among several retailers will be permitted place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within ~~two weeks~~ fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.

7. ~~Personnel~~ Processor personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders, ~~to~~ shall be charged at wholesale price less appropriate volume discount.
10. All contracts between processors and retailers under this program shall:
  - a. Require delivery at destination being the retailer's place of business;
  - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
  - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of forty-five full cases to each processor to qualify for the dock pickup program. Deliveries of less than forty-five full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.
13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processor.

**History:** Effective September 1, 1996; amended August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

**51-03-04-19. Effective date.** These rules are effective at 12:01 a.m., ~~September 1, 1996~~ August 31, 1998, and all prior stabilization plans for market areas numbers 3, 4, and 6 are hereby repealed.

**History:** Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998.

**General Authority:** NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

**Law Implemented:** NDCC 4-18.1-07

**TITLE 54**  
**Nursing, Board of**



MAY 1999

CHAPTER 54-07-05

**54-07-05-01. Statement of intent.** North Dakota Century Code chapter 43-12.1 allows the licensed nurse to delegate and supervise nursing interventions to individuals authorized by the board to perform those functions. Medication administration is a nursing intervention. ~~While--medication~~ Medication administration is the responsibility of licensed nurses and requires the knowledge, skills, and abilities of the licensed nurse to ensure public safety and accountability, ~~nurse.~~ Nurse assistants with who have completed a prescribed training program in medication administration or with--a--delegation--for who have been delegated the delivery of a specific medication for a specific client may perform the intervention of giving or applying certain medications to the client ~~when--such.~~ These medications ~~do~~ must not require determination of need, drug calculation, or dosage conversion ~~as--long--as~~ the. The licensed nurse ~~is~~ must be available to monitor the client's progress and effectiveness of the prescribed medication regimen. ~~Individuals-to-whom-the-intervention--of--medication--administration--is~~ ~~delegated--must--complete--a--prescribed--training--program--or--receive--a~~ ~~delegation--for--the--delivery--of--a--specific--medication--to--a--specific~~ ~~client.~~ Delegation of medication administration in acute care settings or for individuals with unstable or changing nursing care needs is specifically precluded by these rules.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-05-02. Definitions.** The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

1. "Medication administration" means the delivery of medication by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
2. "Medication assistant" means an individual who has a current registration as a nurse assistant, has successfully completed an approved medication assistant program, has demonstrated competency in the administration of certain routine, regularly scheduled medications, and possesses a current registration from the board as a medication assistant.
  - a. Medication assistant I is a person who has completed all the requirements for a medication assistant program I. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.
  - b. Medication assistant II is a person who has completed additional training past the medication assistant program I and met all the requirements for a medication assistant program II. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.
- 2- 3. "Medication assistant program" means a program of study and clinical practice in the administration of certain routine, regularly scheduled medications which meets board requirements. The board has developed criteria for two types of programs:
  - a. Medication assistant program I, chapter 54-07-06.1, is applicable to settings in which a licensed nurse is not regularly scheduled and provides indirect supervision; or
  - b. Medication assistant program II, chapter 54-07-07, is applicable to settings in which a licensed nurse is regularly scheduled and available to provide direct supervision.
4. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four hour period of time in a setting where nursing care is continuously delivered.

3: 5. "Routine, regularly scheduled medications" means the components of a legally identified medication regimen for an individual or groups of individuals with stable, predictable conditions which are administered on a routine basis and do not require drug calculations, determination of need, or dosage conversion.

a: ~~Medications included in this definition may include those administered orally, topically, nasally, or instilled within the eye or ear.~~

b: ~~Medications excluded from this definition include any medications to be administered by injection, through a tube, or inserted into another body cavity, except when specifically delegated by a licensed nurse to a specific nurse assistant for a specific client.~~

c: ~~The licensed nurse may make the determination to exclude any medication from this definition.~~

6. "Specific delegation of medication administration" means the licensed nurse delegates the delivery of specific medication for a specific client to a specific nurse assistant.

4: 7. "Stable and predictable" means a situation where the client's clinical and behavioral status and nursing care needs are determined by the registered licensed nurse or licensed practitioner to be nonfluctuating and consistent or where the fluctuations are expected and the interventions are planned.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-05-04. Requirements for supervision.** The licensed nurse must be on the unit and available for immediate direction in a licensed nursing facility. In any other setting where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must establish in writing the process for providing the supervision in order to provide the recipient of the medication appropriate safeguards.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-05-05. Initial registration Eligibility for medication assistant registration.** An application for registration as a medication assistant and a twenty dollar fee must be submitted by the applicant to

the board office. ~~Successful completion must be documented by the program.~~ The applicant for medication assistant registration must have registration on a board-recognized nurse assistant registry. Upon receipt of the required materials, a medication assistant registration I or II, that reflects the type of program completed, will be issued to correspond with the applicant's registration as a nurse assistant.

1. Nurse assistants may obtain initial medication assistant I registration by:
  - a. Successfully completing a board-approved medication assistant program I; or
  - b. Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board-approved medication assistant program I curriculum.
2. Nurse assistants may obtain initial medication assistant II registration by:
  - a. Successfully completing a board-approved medication assistant program II;
  - b. Showing satisfactory evidence of successful completion of two semesters of nursing school, each of which must have included a clinical nursing component. The two semesters combined must have included the required medication assistant program II curriculum content; or
  - c. Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board-approved medication assistant program II curriculum.
3. Nurse assistants successfully completing a medication assistant program prior to August 1, 1999, are not subject to the initial medication assistant I registration requirements in subsection 1.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(6)

54-07-05-06. Registration---Reregistration Medication assistant registration renewal. The medication assistant registration expiration date must correspond to the individual's nurse assistant registration expiration date and must be renewable at the same time that the nurse assistant registration is renewed. ~~Additional information regarding the individual's performance as a medication assistant will be requested by the board in the renewal process as satisfactory performance as a~~

~~medication assistant must be validated by the employing organization prior to the issuance of the renewal registration.~~ Medication assistant registry listing renewal requires verification of continued competence by a licensed nurse within the employing facility.

Nurse assistants who have completed a medication assistant program prior to August 1, 1999, and nurse assistants who have completed either the medication assistant program I or the medication assistant program II after that date are not required to retake the program prior to renewing registration at the same level.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12-1-09(6); 43-12.1-10(2)

**54-07-05-07. Reinstatement of lapsed medication assistant registration.** ~~A lapsed registration can be reinstated with verification of competency as a medication assistant and meeting all of the requirements for registration.~~ An individual with previous medication assistant training who has not performed medication assistant duties within the last two years must:

1. Demonstrate performance of medication administration to a licensed nurse within the employing facility by satisfactory completion of a board-approved clinical skills checklist; or
2. Complete a board-approved medication assistant program I or II that is appropriate to the practice setting.

**History:** Effective September 1, 1994; amended effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10(2)

**54-07-05-09. Routes or types of medication administration.**

1. Administration of the initial dose of a medication that has not been previously administered to the client must be administered according to organization policy.
2. Medication assistant students and medication assistants I or II may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to organization policy:
  - a. Oral, sublingual, and buccal medications;
  - b. Eye medications;
  - c. Ear medications;

- d. Nasal medications;
  - e. Rectal medications and enemas;
  - f. Vaginal medications;
  - g. Topical medications;
  - h. Metered hand-held inhalants; and
  - i. Unit dose nebulizers.
3. Medication assistant students and medication assistants I or II may only administer medications by the following routes when specifically delegated by a licensed nurse for a specific client:
- a. Gastrostomy;
  - b. Jejunostomy; and
  - c. Subcutaneous.
4. Medication assistant students and medication assistants I or II may not administer medications by the following routes:
- a. Central lines;
  - b. Colostomy;
  - c. Intramuscular injection;
  - d. Intravenous medications;
  - e. Heparin lock;
  - f. Nasogastric tube;
  - g. Nonmetered inhaler;
  - h. Intradermal;
  - i. Nonunit dose aerosol/nebulizer; or
  - j. Urethral catheter.
5. Medication assistant students and medication assistants I or II may not administer the following kinds of medications:
- a. Barium and other diagnostic contrast media; or
  - b. Chemotherapeutic agents.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 43-12.1-08  
**Law Implemented:** NDCC 43-12.1-08(6)

54-07-05-10. Pro re nata medications.

1. The decision to administer pro re nata medications cannot be delegated in situations where an onsite assessment of the client is required prior to administration.
2. Some situations allow the administering of pro re nata medications without directly involving the licensed nurse prior to each administration.
  - a. The decision regarding whether an onsite assessment is required is at the discretion of the licensed nurse.
  - b. Written parameters specific to an individual client's care must be written by the licensed nurse for use by the medication assistant when an onsite assessment is not required prior to administration of a medication. These written parameters:
    - (1) Supplement the physician's pro re nata order; and
    - (2) Provide the medication assistant with guidelines that are specific regarding the pro re nata medication.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 43-12.1-08  
**Law Implemented:** NDCC 43-12.1-08(6)

**CHAPTER 54-07-06**  
**MEDICATION ASSISTANT PROGRAM REQUIREMENTS**

[Repealed effective May 1, 1999]

## CHAPTER 54-07-06.1

54-07-06.1-01. Medication assistant program I. The medication assistant program I consists of the theoretical concepts of medication administration and supervised clinical administration of medication. The curriculum must meet the requirements established by the board and include, at a minimum:

1. Course objectives described in terms of student outcome competencies including the following:
  - a. Utilize the principles of safety in the administration of medication;
  - b. Define terms related to the administration of medications;
  - c. Correctly interpret abbreviations commonly used in administration of medications;
  - d. Keep accurate records; and
  - e. Identify legal parameters of the medication assistant role.
2. Medication assistant program I students must complete the clinical portion of the medication assistant program within six months of completion of the theory portion. Failure to do so will render the individual ineligible to administer medications.
3. A passing score of eighty-five percent is required on the theory test with an opportunity to retake the test one time. If a student fails on retake, additional instruction is required before further testing is allowed.
4. Medication assistant program I students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the clinical skills checklist.
5. During the clinical learning experience, the licensed nurse shall:
  - a. Provide direct over-the-shoulder supervision with initial medication pass;
  - b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical skills checklist is obtained; and

- c. Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.
6. Medication assistant program coordinators are required to submit to the board office, within two weeks of completion of a course, a list of students completing the medication assistant program. The list must contain the name, address, and social security number of the student; the name and qualifications of the faculty; the clinical facility or employer and address; and facility clinical coordinator of each student who successfully completes the course.
7. A certificate must be awarded to a person who has successfully completed the medication assistant program I. The certificate must include the name and location of the institution, course title, date of completion, full name of the person who completed the program, signature of the program coordinator, and date the certificate was awarded.
8. Medication assistant programs shall maintain records that are available for a period of seven years. These records must include:
- a. Program records.
- (1) Curriculum; and
- (2) Evaluation tools for student performance, both theory and clinical.
- b. Student records.
- (1) Course start and completion date;
- (2) Clinical skills checklist;
- (3) Examination scores; and
- (4) Copy of certificate of successful completion.
9. Medication assistant programs must be approved by the board every four years.

Medication assistant programs I conducted prior to August 1, 1997, in North Dakota service settings will have twenty-four calendar months to meet the requirements of this chapter.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

54-07-06.1-02. Instructor requirements. The registered nurse is responsible for the development of the theory, laboratory component, and supervision of the program. All medication administration as a part of the clinical learning experience must be supervised by a licensed nurse.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

54-07-06.1-03. Curriculum. The medication assistant program I curriculum for delegated medication administration must include:

1. Medication concepts:
  - a. Terminology and commonly used abbreviations;
  - b. Classification of medications;
  - c. Generic and trade names;
  - d. Dosage, range, and action;
  - e. Side effects;
  - f. Medication routes; and
  - g. References and sources of information.
2. Roles, responsibilities, legal aspects, and limitations of medication assistant I and licensed nurse:
  - a. Scope of duties for a medication assistant I;
  - b. Licensed nurse responsibilities in relationship to a medication assistant I;
  - c. Client rights, including the right to refuse medication;
  - d. Laws related to medication administration; and
  - e. Knowledge of organization policy related to medication administration.
3. Methods of medication packaging:
  - a. Unit dose; and
  - b. Stock.
4. Storage of medication.
5. Administering and charting medications:

- a. Preparation and administration of medications;
  - b. Five rights;
  - c. Use of medication administration record to:
    - (1) Verify prescribers' orders;
    - (2) Administer medications; and
    - (3) Documentation of medication administration; and
  - d. Medication errors and reporting techniques.
6. Standard precautions for infection control.
7. An overview of the major categories of medications and body systems.
8. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.
9. Clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

## CHAPTER 54-07-07

54-07-07-01. Medication assistant program II. The medication assistant program II consists of a minimal timeframe: forty hours of theory, eight hours of laboratory, and thirty-two hours of clinical learning experience. The curriculum must meet the requirements established by the board and include, at a minimum:

1. Course objectives described in terms of student outcome competencies including the following:
  - a. Utilize the principles of safety in the administration of medication;
  - b. Define terms related to the administration of medications;
  - c. Correctly interpret abbreviations commonly used in administration of medications;
  - d. Keep accurate records; and
  - e. Identify legal parameters of the medication assistant role.
2. Medication assistant program II students who complete the classroom portion of the medication assistant program have six months from the completion of classroom instruction to successfully complete the clinical portion of the program. Failure to do so will render the individual ineligible to complete the clinical portion of the program, unless the individual has performed duties as a medication assistant in another state within the last six months.
3. Tests are developed for each unit in the curriculum, including a final test. A passing score of eighty-five percent is required on each unit test with an opportunity to retake each test one time. If a student fails on retake, additional instruction is required before further testing is allowed. The theory portion of the course must be successfully completed before beginning the clinical portion.
4. Medication assistant students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the laboratory skills and clinical skills checklist.
5. During the clinical learning experience, the licensed nurse shall:
  - a. Provide direct over-the-shoulder supervision with initial medication pass;

- b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical skills checklist is obtained; and
  - c. Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.
- 6. Medication assistant program coordinators are required to submit to the board office, within two weeks of completion of a course, a list of students completing the medication assistant program. The list must contain the name, address, and social security number of the student; the name and qualifications of the faculty; the clinical facility or employer and address; and facility clinical coordinator of each student who successfully completes the course.
- 7. A certificate must be awarded to a person who has successfully completed the medication assistant program II. The certificate must include the name and location of the institution, course title and length of the program, date of completion, full name of the person who completed the program, signature of the program coordinator, and date the certificate was awarded.
- 8. Medication assistant programs shall maintain records that are available for a period of seven years. These records must include:
  - a. Program records.
    - (1) Curriculum; and
    - (2) Evaluation tools for student performance, both theory and clinical.
  - b. Student records.
    - (1) Course start and completion date;
    - (2) Laboratory skills and clinical skills checklist;
    - (3) Examination scores; and
    - (4) Copy of certificate of successful completion.
- 9. Medication assistant programs shall be approved by the board every four years.

Medication assistant programs II conducted prior to August 1, 1997, in North Dakota service settings will have twenty-four calendar months to meet the requirements of this chapter.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08  
**Law Implemented:** NDCC 43-12.1-08(6)

54-07-07-02. Instructor requirements. The registered nurse is responsible for the development of the theory, laboratory component, and supervision of the program. All medication administration as a part of the clinical learning experience must be supervised by a licensed nurse.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 43-12.1-08  
**Law Implemented:** NDCC 43-12.1-08(6)

54-07-07-03. Curriculum. The medication assistant program II curriculum for delegated medication administration must include:

1. Medication concepts:
  - a. Terminology and commonly used abbreviations;
  - b. Classification of medications;
  - c. Generic and trade names;
  - d. Dosage, range, and action;
  - e. Side effects;
  - f. Medication routes; and
  - g. References and sources of information.
2. Roles, responsibilities, legal aspects, and limitations of medication assistant II and licensed nurse:
  - a. Scope of duties for a medication assistant II;
  - b. Licensed nurse responsibilities in relationship to a medication assistant II;
  - c. Client rights, including the right to refuse medication;
  - d. Laws related to medication administration; and
  - e. Knowledge of organization policy related to medication administration.
3. Methods of medication packaging:
  - a. Unit dose; and
  - b. Stock.

4. Storage of medication.
5. Administering and charting medications:
  - a. Preparation and administration of medications;
  - b. Five rights;
  - c. Use of medication administration record to:
    - (1) Verify prescribers' orders;
    - (2) Administer medications; and
    - (3) Document medication administration; and
  - d. Medication errors and reporting techniques.
6. Standard precautions for infection control.
7. Major categories of medications related to body systems, including:
  - a. Cardiovascular;
  - b. Endocrine;
  - c. Gastrointestinal;
  - d. Integumentary;
  - e. Musculoskeletal;
  - f. Nervous;
  - g. Reproductive;
  - h. Respiratory;
  - i. Sensory; and
  - j. Urinary.
8. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.
9. Laboratory and clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

## CHAPTER 54-07-08

54-07-08-01. Specific delegation. A licensed nurse who delegates specific medication administration to a specific nurse assistant for a specific client shall:

1. Supply organization procedural guidelines for the nurse assistant to follow in the administration of medication by specific delegation.
2. Teach each nurse assistant for each specific client's medication administration which includes verbal and written instruction for the specific client's individual medications:
  - a. The trade name and generic name;
  - b. The purpose of the medication;
  - c. Signs and symptoms of common side effects, warnings, and precautions;
  - d. Route of administration; and
  - e. Instructions under which circumstances to contact the licensed nurse or licensed practitioner.
3. Observe the nurse assistant administering the medication to the specific client until competency is demonstrated.
4. Verify the nurse assistant's competency through a variety of methods, including oral quizzes, written tests, and observation. The nurse verifies that the nurse assistant:
  - a. Knows the five rights for each medication for the specific client:
    - (1) Right client;
    - (2) Right medication;
    - (3) Right dosage;
    - (4) Right route; and
    - (5) Right time;
  - b. Knows the name of the medication and common dosage;
  - c. Knows the signs and symptoms of side effects for each medication;

- d. Knows when to contact the licensed nurse;
  - e. Can administer the medication properly to the client; and
  - f. Documents medication administration according to organization policy.
5. Document the training of the nurse assistant related to the specific delegation of medication administration for each client.
6. Evaluate the client when medication orders change and determine if further instruction for each nurse assistant is necessary to implement the change.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)



**TITLE 55**

**Nursing Home Administrators, Board of Examiners for**



DECEMBER 1998

CHAPTER 55-02-01

**55-02-01-02. General definitions.** In this article unless the subject matter or context requires otherwise:

1. "Board" means the North Dakota state board of examiners for nursing home administrators.
2. "General administrative charge of a North Dakota nursing home" means a nursing home administrator whose major responsibility is the complete operation of a nursing home.
3. "Inactive license status" means the period, beginning on or after January 1, 1993, during which a duly licensed nursing home administrator has temporarily abandoned the practice of nursing home administration in the state of North Dakota.
4. "Nursing home" means any institution or facility defined as such for licensing ~~purpose~~ purposes under North Dakota state law or pursuant to the rules for nursing homes by the state department of health ~~and consolidated laboratories~~, whether proprietary or nonprofit, including ~~but not limited to~~ nursing homes owned or administered by the state government or an agency or political subdivision thereof.
5. "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a North Dakota nursing home.
6. "Person" means an individual and does not include the terms firm, corporation, association, partnership, institution,

public body, joint stock association, or any other group of individuals.

**History:** Amended effective February 1, 1993; December 1, 1998.

**General Authority:** NDCC 43-34-09

**Law Implemented:** NDCC 43-34-01, 43-34-09

**55-02-01-07. Requirements for licensure.** No A person shall may not be permitted to take an examination for licensure as a nursing home administrator unless the person shall--have first submitted submits evidence satisfactory to the board that the person:

1. Has a baccalaureate degree ~~in long-term care administration~~ from an accredited college or university ~~or has a baccalaureate degree from an accredited college or university with a minimum of one course in each of the following: management, finance, human resources, and gerontology; and~~
2. ~~If making application for an examination occurring on or after July 1, 1997, has~~ Has completed a board-approved administrator-in-training program.

**History:** Amended effective July 1, 1979; February 1, 1993; June 1, 1996; December 1, 1998.

**General Authority:** NDCC 43-34-08

**Law Implemented:** NDCC 43-34-03

**55-02-01-08. Application for examination.** An applicant for examination and qualification for licensure as a nursing home administrator shall must make application in writing, on forms provided by the board, and shall furnish evidence satisfactory to the board that the applicant meets the licensure requirements as provided for in section 55-02-01-07, pay an application fee of one hundred dollars, and pay an examination fee of twenty-five dollars plus the cost charged by the national association of boards of examiners of long-term care administrators for the written examination. An applicant for examination shall must submit two references from individuals engaged in business, professional, or religious work, ~~who shall speak at a minimum, to the applicant's educational preparation or experience related to long-term care administration.~~

**History:** Amended effective February 1, 1993; June 1, 1996; December 1, 1998.

**General Authority:** NDCC 43-34-09

**Law Implemented:** NDCC 43-34-03

**55-02-01-10. Examination.**

1. Every applicant for licensure as a nursing home administrator, except an individual applying for licensure through

endorsement, shall be is required to pass a written national examination and--if--application--is--made---on---or---before January-10,-1997,-an-oral-examination.

2. The board shall use as a basis for an oral examination a written outline of the subject matter that may include:
  - a. Applicable standards of environmental health and safety;
  - b. Local health and safety regulations;
  - c. General administration;
  - d. Psychology of patient care;
  - e. Principles of medical care;
  - f. Personal and social care;
  - g. Therapeutic and supportive care and services in long-term care;
  - h. Departmental organization and management; and
  - i. Community interrelationships.
3. The board shall use the test provided by the national association of boards of examiners for---nursing---home administrators of long-term care administrators for the written examination.

**History:** Amended effective February 1, 1993; June 1, 1996; December 1, 1998.

**General Authority:** NDCC 43-34-09

**Law Implemented:** NDCC 43-34-03

#### **55-02-01-12. Continuing education.**

1. ~~Twenty-five~~ Twenty hours of continuing education must be obtained each calendar year. A record of continuing education must be submitted with the application for renewal of license.
2. Continuing education hours must be obtained from providers approved by the board.

**History:** Amended effective February 1, 1993; December 1, 1998.

**General Authority:** NDCC 43-34-09

**Law Implemented:** NDCC 43-34-03

#### **55-02-01-15. Licenses.**

1. An applicant for licensure as a nursing home administrator who has successfully complied with the requirements of North Dakota Century Code chapter 43-34 and this chapter and has passed the examinations provided in section 55-02-01-10 shall be issued a license certifying that the applicant has met the requirements of the laws and rules entitling the applicant to serve, act, practice, and otherwise hold oneself out as a duly licensed nursing home administrator.
2. The board may, upon application, issue a provisional license to any person who:
  - a. Meets the requirements for licensure set forth in section 55-02-01-07;
  - b. Has a bona fide offered position as a nursing home administrator; and
  - c. ~~If--applying-on-or-before-January-10,-1997,-passes-an-oral-examination;-and~~
  - d. Has never previously held a provisional license in North Dakota.
3. The provisional license is valid until the results of the next scheduled written examination are received by the board.
4. Upon application, the board may issue a license through endorsement to any person who:
  - a. Has received a passing grade on a national exam recognized by the national association of boards of examiners ~~for nursing----home----administrators~~ of long-term care administrators;
  - b. Pays an application fee of one hundred dollars;
  - c. Holds a valid license from the transferring state; and
  - d. ~~Either--satisfies~~ Satisfies the licensure requirements under section 55-02-01-07 ~~or,~~ has been employed as a licensed nursing home administrator for at least thirty-six months of the forty-eight months immediately preceding the application, or is certified by the American college of health care administrators.

**History:** Amended effective February 1, 1993; June 1, 1996; December 1, 1998.

**General Authority:** NDCC 43-34-09

**Law Implemented:** NDCC 43-34-04

**55-02-01-16. Registration and renewal of licenses.**

1. Any person who holds a license issued by the board shall be registered with the board. The license shall--expire expires on the thirty-first day of December in the year of its issuance, and shall-be is renewable annually upon payment of the license fee. The board,-by-November-fifteenth-of-each year, shall transmit application--for renewal forms to all licensees whose licenses expire on December thirty-first.
2. ~~Upon making an application for renewal, the~~ The licensee shall pay an annual license fee ~~not to exceed the amount--set--forth in--North--Dakota--Century--Code--section--43--34--05~~ of one hundred dollars.
3. Upon receipt of the ~~application---~~ renewal form, documentation of the continuing education hours required in section 55-02-01-12, and the license fee, the board shall issue a ~~renewal license to the nursing home administrator.~~
4. The board shall maintain a register of all ~~applications for licensing of~~ licensed nursing home administrators. The board shall maintain a complete file of such pertinent information as may be deemed necessary.

**History:** Amended effective February 1, 1993; June 1, 1996; December 1, 1998.

**General Authority:** NDCC 43-34-09, 43-34-10

**Law Implemented:** NDCC 43-34-09, 43-34-10

**55-02-01-17. Refusal, suspension, and revocation of licenses.**

The board may suspend, revoke, or refuse to issue a license for a nursing home administrator, or may reprimand or otherwise discipline a licensee, or provisional licensee, after due notice and an opportunity to be heard at a formal hearing, upon substantial evidence that the licensee, provisional licensee, or applicant for license:

1. Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the rules and regulations of the board pertaining thereto;
2. Has willfully or repeatedly violated any of the provisions of the law, rules, or regulations of the licensing authority having jurisdiction of the operation and licensing of nursing homes;
3. Has practiced fraud, deceit, or misrepresentation in securing or procuring a nursing home administrator license;
4. Has practiced fraud, deceit, or misrepresentation in the licensee's capacity as a nursing home administrator;
5. Has committed acts of misconduct in ~~the operation of~~ a nursing home ~~under the licensee's jurisdiction;~~

6. Has practiced without a license;
7. Has wrongfully transferred or surrendered possession, either temporarily or permanently, the licensee's license to any other person;
8. Has been guilty of fraudulent, misleading, or deceptive advertising;
9. Has falsely impersonated another licensee of a like or different name;
10. Has willfully failed to exercise true regard for the safety, health, and life of the resident;
11. Has willfully permitted unauthorized disclosure of information relating to a resident or the resident's records; or
12. Has willfully discriminated in respect to residents, employees, or staff on account of race, religion, color, or national origin.

**History:** Amended effective February 1, 1993; December 1, 1998.

**General Authority:** NDCC 43-34-09

**Law Implemented:** NDCC 43-34-09

**55-02-01-18. Complaints and administrative hearing procedures.**

1. Any person, public officer, association, or the board, may register a complaint against a licensee. The complaint ~~shall~~ must be ~~in--writing--and--shall--be~~ submitted in writing to the board.
2. The board ~~may--hold--a--preliminary--hearing~~ shall conduct an investigation to determine whether a ~~formal~~ an administrative hearing on the complaint is necessary.
3. If the board decides that the complaint shall be heard, the proceedings shall be in accordance with North Dakota Century Code ~~section-28-32-05~~ chapter 28-32.
4. a. Upon the conclusion of the hearing, the board may revoke the license ~~of-the-accused, or~~ suspend the license for a fixed period, ~~or~~ reprimand the licensee, ~~or~~ take such other disciplinary action, or dismiss the charges.
  - b. An order or suspension made by the board may contain such provisions as to reinstatement of the license as the board shall direct.
  - c. The board, upon good cause, may direct a rehearing in accordance with North Dakota Century Code section

28-32-14. Any appeal shall be taken in the manner provided in North Dakota Century Code chapter 28-32.

**History:** Amended effective February 1, 1993; December 1, 1998.

**General Authority:** NDCC 28-32-05

**Law Implemented:** NDCC 43-34-09

**55-02-01-19. Conduct of hearings.**

1. ~~Any hearing conducted shall be pursuant to North Dakota Century Code chapter 28-32.~~
2. ~~At any formal administrative hearing conducted pursuant to this chapter, if a party shall appear without counsel, the board or person designated as hearing officer shall advise the party of the party's right to be represented by counsel, and that if the party desires to proceed without counsel, the party may call witnesses, cross-examine witnesses, and produce evidence in the party's behalf.~~
3. ~~Appearances shall be noted on the official record of hearings.~~
4. ~~The board may grant adjournments upon request of any party to the proceedings, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.~~
5. ~~If an adjournment is requested in advance of the hearing date, the request shall be submitted to the board in writing, and shall specify the reasons for the request.~~
6. ~~In considering an application for adjournment of a hearing, the board shall consider whether the purpose of the hearing will be affected or defeated by the granting of the adjournment.~~
7. ~~The board may issue subpoenas and subpoena duces tecum pursuant to North Dakota Century Code section 28-32-09.~~
8. ~~The board shall not be bound by common law or statutory rules of evidence in the conduct of a hearing, but shall be in accordance with North Dakota Century Code sections 28-32-06 and 28-32-07.~~
9. ~~Upon the conclusion of a hearing, the board shall make its findings of fact, conclusions of law and decisions in accordance with North Dakota Century Code section 28-32-13.~~
10. ~~The record, minutes, and evidences of a formal hearing shall be made available to all parties for examination at the office of the board, or at such place as the board may direct.~~  
Repealed effective December 1, 1998.

**General Authority:** NDCC-28-32-05  
**Law Implemented:** NDCC-43-34-09

**55-02-01-21. Inactive license status.** A nursing home administrator whose license has not been revoked or suspended may request inactive license status. While in inactive license status, the administrator must submit a renewal application form and a license fee annually but the continuing education requirement as set forth in section 55-02-01-12 need not be met. A license may not be issued during the inactive license status period. A nursing home administrator must obtain ~~twenty-five~~ twenty hours of continuing education hours prior to reactivating his or her license. A nursing home administrator who chooses inactive license status for a period in excess of five consecutive years must pass an oral examination prior to reactivating a license.

**History:** Amended effective February 1, 1993; June 1, 1996; December 1, 1998.

**General Authority:** NDCC 43-34-03, 43-34-09  
**Law Implemented:** NDCC 43-34-03, 43-34-09

**55-02-01-24. Applicability - Legal effect - Separability.**

1. This chapter shall be supplemental to the law providing for the licensing of nursing home administrators and pursuant to North Dakota Century Code section 28-32-03 shall have the force and effect of law.
2. Every rule, regulation, order, and direction adopted by the board shall state the date on which it takes effect and a copy thereof signed by the chairperson of the board and the secretary-treasurer of the board shall be filed as a public record in the office of the board and in accordance with requirements in North Dakota Century Code chapter 28-32.
3. This chapter is intended to be consistent with the applicable federal and state law ~~and--shall--be--construed;--whenever necessary;--to--achieve--such--consistency.~~ If any provision of this chapter conflicts with existing or future requirements of the United States government with respect to licensing of nursing home administrators, the federal requirements must prevail.
4. In the event that any provision of this chapter is declared unconstitutional or invalid, or the application thereof to any person or circumstance is held invalid, the applicability of the provision to other persons and circumstances and the constitutionality or validity of every other provision of this chapter shall not be affected thereby.

5. This chapter shall not affect pending actions or proceedings, civil or criminal, but the same may be prosecuted or defended in the same manner and with the same effect as though this chapter has not been promulgated.
6. The board shall furnish a copy of this chapter to all applicants and licensees.
7. Amendments to this chapter may be made only by a majority vote of all members of the board.

**History:** Amended effective June 1, 1996; December 1, 1998.

**General Authority:** NDCC 28-32-03

**Law Implemented:** NDCC 43-34-09



**TITLE 67**  
**Public Instruction, Superintendent of**



MAY 1999

CHAPTER 67-09-01

**67-09-01-02. Construction costing more than twenty-five thousand dollars must be approved.** A district may not undertake construction of any school building or facility estimated to cost more than twenty-five thousand dollars unless the construction is approved by the superintendent. If construction is the result of a plan to correct deficiencies as required and approved by the state fire marshal, approval by the superintendent is required only after the estimated costs of improvement exceed seventy-five thousand dollars.

**History:** Effective April 1, 1994; amended effective May 1, 1999.

**General Authority:** NDCC 15-35-01.1

**Law Implemented:** NDCC 15-35-01.1, 15-35-01.2

**ARTICLE 67-11**

**[Reserved]**

**STAFF COMMENT:** Articles 67-12 and 67-13 contain all new material and is not underscored so as to improve readability.

## **ARTICLE 67-12**

### **STANDARDS FOR SCHOOLBUSES**

Chapter  
67-12-01 Standards for Schoolbuses

#### **CHAPTER 67-12-01 STANDARDS FOR SCHOOLBUSES**

Section	
67-12-01-01	Minimum Standards Required
67-12-01-02	National Standards Adopted
67-12-01-03	Additional Standards
67-12-01-04	Effective Date
67-12-01-05	Investigation and Enforcement

**67-12-01-01. Minimum standards required.** All public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in this chapter.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 39-21-27.1, 15-21-22, 15-21-07, 28-32-02

**Law Implemented:** NDCC 39-21-27.1

**67-12-01-02. National standards adopted.** Except as provided in section 67-12-01-03, the body and chassis standards identified in the federal motor vehicle safety standards for schoolbuses, 49 CFR part 571, are hereby adopted for schoolbuses in this state.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 39-21-27.1, 15-21-22, 15-21-07, 28-32-02

**Law Implemented:** NDCC 39-21-27.1

**67-12-01-03. Additional standards.** Whenever body and chassis standards identified in the 1995 revised edition of the national minimum standards for schoolbus construction, as developed by the twelfth national conference on school transportation, May 21-26, 1995, exceed or are in addition to the federal motor vehicle safety standards for

schoolbuses, those national minimum standards for schoolbus construction apply and are hereby adopted by reference.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 39-21-27.1, 15-21-22, 15-21-07, 28-32-02

**Law Implemented:** NDCC 39-21-27.1

**67-12-01-04. Effective date.** These specifications apply to bus chassis and bodies manufactured after January 1, 2000.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 39-21-27.1, 15-21-22, 15-21-07, 28-32-02

**Law Implemented:** NDCC 39-21-27.1

**67-12-01-05. Investigation and enforcement.** If the department of public instruction has reason to believe that a school district is operating a bus which does not conform to the standards established by this chapter, the department shall request that the North Dakota highway patrol investigate and report its findings to the department. If the findings indicate noncompliance, the department of public instruction shall notify the school district accordingly and order that the vehicle not be operated until it is in compliance. The department shall also notify the school district of its opportunity to request a review and reconsideration of the decision if such request is made within two weeks of the date of mailing by the department of public instruction. The reconsideration request must state the following:

1. The facts, law, or rule which the school district believes was erroneously interpreted or applied; and
2. The school district's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction will issue a final written response on the reconsideration request within two weeks after receiving a complete reconsideration request.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 39-21-27.1, 15-21-11, 15-21-07, 28-32-02

**Law Implemented:** NDCC 39-21-27.1

**ARTICLE 67-13**

**SCHOOL DISTRICT COOPERATIVE AGREEMENTS**

Chapter  
67-13-01 School District Cooperative Agreements

**CHAPTER 67-13-01**  
**SCHOOL DISTRICT COOPERATIVE AGREEMENTS**

Section	
67-13-01-01	Purpose
67-13-01-02	Approval
67-13-01-03	Withdrawal
67-13-01-04	School Districts
67-13-01-05	Cooperative Program
67-13-01-06	Agreements

**67-13-01-01. Purpose.** School districts cooperating with another school district or districts for the purpose of providing joint educational opportunities to the students as established by North Dakota Century Code section 15-40.1-07.4 may receive additional per student payments for each high school and elementary student for up to four years.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 28-32-02, 15-40.1-07.4  
**Law Implemented:** NDCC 15-40.1-07.4

**67-13-01-02. Approval.** Cooperative agreements of education must first receive the approval of the superintendent of public instruction and shall be effective for a period of one school year beginning July first, upon the approval of the school boards of the member districts. The agreement may be changed only by a majority vote of each board signing the agreement and the approval of the department of public instruction.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 28-32-02, 15-40.1-07.4  
**Law Implemented:** NDCC 15-40.1-07.4

**67-13-01-03. Withdrawal.** Any district wishing to withdraw from the cooperative agreement must submit its intent to the other cooperative members in writing by January fifteenth. Withdrawal will become effective June thirtieth of the same year.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 28-32-02, 15-40.1-07.4  
**Law Implemented:** NDCC 15-40.1-07.4

**67-13-01-04. School districts.** Cooperating school districts must agree to equitably share expenses of the cooperative agreement, to inventory all equipment used by the cooperative, and to provide appropriate transportation.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 28-32-02, 15-40.1-07.4  
**Law Implemented:** NDCC 15-40.1-07.4

**67-13-01-05. Cooperative program.** The school district cooperative must address the following:

1. A plan for providing unduplicated grade level services for at least four grade levels;
2. A plan for sharing administration, at a minimum a shared superintendent;
3. A plan for sharing cooperative expenditures between the member districts;
4. A plan for sharing cooperative revenues upon termination of the cooperative; and
5. A plan for the changing of the agreement.

**History:** Effective May 1, 1999.  
**General Authority:** NDCC 28-32-02, 15-40.1-07.4  
**Law Implemented:** NDCC 15-40.1-07.4

**67-13-01-06. Agreements.** The following areas must be discussed with hopes of arriving at written agreements. However, written agreements are not required for:

1. Identification of the location of education and grade level services programs;
2. Provisions for curriculum integration;
3. Site utilization regarding partial usage or closure;
4. Provision of administrative positions beyond the minimums required by school accreditation;
5. Provision for sharing of extracurricular activities; and

6. The number and timely manner in which the school boards will meet jointly during the duration of the agreement.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07.4

**Law Implemented:** NDCC 15-40.1-07.4

**ARTICLE 67-14**

**[Reserved]**

**ARTICLE 67-15**

**[Reserved]**

**ARTICLE 67-16**

**[Reserved]**

**ARTICLE 67-17**

**[Reserved]**

**ARTICLE 67-18**

**[Reserved]**

**ARTICLE 67-19**

**[Reserved]**

**STAFF COMMENT:** Article 67-20 contains all new material and is not underscored so as to improve readability.

## **ARTICLE 67-20**

### **HIGH SCHOOL SUMMER SCHOOL PAYMENTS**

Chapter  
67-20-01 High School Summer School Payments

#### **CHAPTER 67-20-01 HIGH SCHOOL SUMMER SCHOOL PAYMENTS**

Section	
67-20-01-01	Eligibility
67-20-01-02	Applications
67-20-01-03	Courses
67-20-01-04	Scheduling
67-20-01-05	Students
67-20-01-06	Monitoring
67-20-01-07	Cooperative Programs
67-20-01-08	Payments

**67-20-01-01. Eligibility.** School districts that wish to receive proportionate payments for high school summer school programs must make application with the department of public instruction no later than June first each year. Application for driver education program approval must be made with the drivers license and traffic safety division of the department of transportation which forwards the application to the department of public instruction for final approval.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07

**67-20-01-02. Applications.** Application forms provided by the department of public instruction for all summer programs require the name of school; county; district number; name of the person responsible for the summer program; telephone number; opening and closing date of the summer program; schedule of courses; teacher's names, social security numbers, majors, minors, teaching certificate numbers with expiration dates, assignments, and schedules; a statement of how the summer session will improve the schedule and program for the regular school year; and the school district superintendent's signature. The department of transportation provides the driver education summer application or forms may be obtained from the department of public

instruction if they are not available from the department of transportation.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07

**67-20-01-03. Courses.** All courses in the summer school program must meet the following criteria:

1. Each course must be part of the high school curriculum as adopted by the school board and must be offered and available to all high school students.
2. Each course must be from approved courses listed in the department's "A Manual of K-12 Course Codes and Descriptions", 1998 revised.
3. Courses that are not listed in the department's "A Manual of K-12 Course Codes and Descriptions", 1998 revised, are considered experimental projects and must be approved by the department as a course prior to the first day the summer program is in session in accordance with procedures outlined in the department's "A Manual of K-12 Course Codes and Descriptions", 1998 revised.
4. Physical education and science courses must be approved prior to the first day of class. The course outline, description of activities, and schedule must be submitted to the department for approval by May first.
5. Teachers must be qualified to teach in accordance with North Dakota Century Code section 15-41-25.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07

**67-20-01-04. Scheduling.** Summer high school programs must be conducted between the closing date and the beginning date of the regular school term.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07

**67-20-01-05. Students.** Students must have completed grade eight to qualify for proportionate payments.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-01(1), 15-40.1-07

**67-20-01-06. Monitoring.** The department of public instruction will monitor summer programs by reviewing documentation and some onsite visits.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07

**67-20-01-07. Cooperative programs.** School districts may develop cooperative programs with other school districts to provide access to courses for as many students as possible. Tuition agreements must be completed and approved by the districts involved in the cooperative summer programs.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07

**67-20-01-08. Payments.** Proportionate foundation aid payments will be paid based on pupil membership enrolled in an approved course. The payment is determined by the weighting factor of the high school, the amount of credit issued, average daily membership, and the amount of funding available for the current biennium. The minimum driver education credit payment is for one-fourth credit consisting of thirty clock hours of classroom instruction, twelve clock hours of driving and observation time, which is paid proportionately if either or both parts are offered during the summer. The classroom instruction, driving, and observation must be completed by a student for the school to receive the proportional payments for a driver education credit.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 28-32-02, 15-40.1-07

**Law Implemented:** NDCC 15-40.1-07



**TITLE 67.1**  
**Education Standards and Practices Board**



JUNE 1999

CHAPTER 67.1-01-01

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

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

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

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

- (d) Notify all board members ten days in advance of any meeting;
- (e) Send out all mailings and notices required by the board;
- (f) Prepare a financial statement for each regular meeting and coordinate vouchers;
- (g) Release statements to the media, subject to board approval; and
- (h) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.

b. Board members. Board members will have regular and functional attendance at all regular meetings. The chairman will recommend to the governor that board members missing three consecutive meetings be replaced. Board members will send any materials for inclusion in mailings to the chairman and director. Members will prepare input for each regular meeting. They will file a written report with the director after attending any subcommittee meetings.

3. **Meetings.** The education standards and practices board shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days' prior notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend. Meetings will be conducted according to Robert's rules of order.

4. **Contact information.** Certification application packets and additional information about the rules of certification of the education standards and practices board may be obtained by writing or calling:

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

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

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

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

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

## CHAPTER 67.1-02-02

### 67.1-02-02-02. Entrance certificates.

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

- (4) Grade levels K-12 preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of grade levels K-12 and special methods of teaching in the specific content area.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels under the supervision of a teacher training institution approved by the education standards and practices board.

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

2. An out-of-state graduate must hold a minimum of a bachelor's degree from a state-approved teacher education institution. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in the North Dakota standards for teacher education program approval paraphrased below:
  - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
  - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific K-12 majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of

coursework specific to the major beyond the introductory level.

- (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area.
  - (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas, and special methods of teaching at the middle level. Study of these areas must total a minimum of ten semester hours with at least two semester hours of special methods of teaching at the middle level.
  - (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school math, science, social studies, reading, and language arts.
  - (4) Grade levels K-12 preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of grade levels K-12 and special methods of teaching in the specific content area.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels under the supervision of a state-approved teacher training institution.

~~The applicant must have a minimum overall grade point average of 2.50. Three positive recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or~~

administrators,--the--recommendations--must--be--secured--from individuals--who--can--speak--with--regard--to--the---teaching potential--and--character--of--the--applicant;--Verification--of eligibility--for--home--state--certification--may--be--requested. Acceptable--translations--for--preparations--received--in--foreign institutions--will--be--requested--at--the--applicant's--expense.

3. An applicant must have a minimum overall grade point average of 2.50.
4. An applicant shall provide three positive recommendations. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
5. Verification of eligibility for home state certification may be requested.
6. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
7. An application fee of ~~five~~ twenty-five dollars must accompany a request for an initial application form.
- 4- 8. A fee of ~~forty~~ sixty dollars must accompany the application for initial certification for in-state and out-of-state graduates. An additional fee of ~~thirty-five~~ one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the certification application.
- 5- 9. All initial certificates are valid for only two consecutive school years.
10. An applicant applying for certification in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15-38-18.2.
  - a. An in-state applicant graduating from a North Dakota teacher preparation program shall obtain two fingerprint cards, the return envelope, and the criminal record inquiry form from college officials at the beginning of the semester in which the person will graduate.
  - b. An out-of-state applicant or an in-state applicant who has previously graduated from a North Dakota institution without seeking teacher certification shall request the

initial certification packet containing two fingerprint cards, the return envelope, and a criminal record inquiry form from the education standards and practices board.

- c. The applicant must take the two fingerprint cards to a sheriff's office, a police department, or campus police for the fingerprinting. Both cards must be completed with a ten-finger check. The cards must not be folded, bent, or altered in any way.
- d. The applicant must provide all information on the fingerprint cards and the criminal record inquiry form including an original signature. Every space must be filled in, either with the appropriate information, or with NA if the category of information does not apply (for instance, military service).
- e. The fingerprinting agency shall put the fingerprint cards and the criminal record inquiry form into the return envelope provided in the packet, along with the applicant's check for forty-two dollars made out to the education standards and practices board. The education standards and practices board will forward payment to the bureau of criminal investigation and the federal bureau of investigation. The envelope should be mailed directly to the Education Standards and Practices Board, State Capitol, 9th Floor, 600 East Boulevard Avenue, Bismarck, ND, 58505-0080.
- f. The applicant is responsible for any local processing fees charged by the fingerprinting agent and the mailing fees.
- g. The applicant is also responsible for filling out and sending in the certification application form and providing official transcripts in a timely manner. The federal bureau of investigation check may take six weeks or more for processing, and a minimum of three weeks must be allowed for processing the application form. The applicant should allow sufficient time for the fingerprint check and the certification process completion before accepting any teaching position. North Dakota Century Code section 15-36-11 requires a current North Dakota teaching certificate for employment.

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

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

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

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

1. "Distance learning instructor" means an out-of-state teacher who conducts a class that is broadcast or delivered to a location in North Dakota from outside North Dakota by any form of electronic transmission, including fiber optic cable, satellite, television, computer, telephone, or microwave.
2. Every distance learning instructor seen or heard in North Dakota must hold a valid North Dakota teaching certificate issued by the education standards and practices board. A distance learning instructor shall obtain such a certificate by providing to the education standards and practices board:
  - a. A certified copy of a current teaching certificate issued by the state of broadcast origin; and
  - b. Certification that the distance learning instructor meets that state's regular certification standards in the subject area taught via electronic transmission.
3. A North Dakota teaching certificate issued pursuant to this section only allows a distance learning instructor to teach in North Dakota via electronic transmission from outside this state. If a teacher desires to teach in North Dakota while being physically present in North Dakota, the teacher must obtain a teaching certificate pursuant to this section.
4. A North Dakota teaching certificate issued pursuant to this section has an application fee of ~~five~~ twenty-five dollars, a certification fee of ~~fifty~~ sixty dollars, an out-of-state review fee of ~~thirty-five~~ one hundred seventy-five dollars and is valid for two years.

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

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

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

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

1. ~~A two-year renewal will be issued to those applicants reentering the profession after an absence of five years; or to applicants with less than eighteen months of contracted teaching in North Dakota, that meet the renewal requirements and pay the required fees. Applicants reentering the profession must complete eight semester hours of reeducation credits during their first two years of contracted employment. Substitute teachers must maintain a valid teaching certificate using the two-year renewal cycle, but are not required to submit reeducation hours unless they sign a contract. Initial applicants from out of state who have had an absence from the profession of five years or more must meet the requirements of North Dakota initial certification as stated in section~~

67.1-02-02-02-and-must--also--complete--the--requirements--for  
reentry-education-as-stated-in-this-section-

- a. A two-year certificate renewal will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who meet the renewal requirements and pay the required fees.
  - b. A two-year certificate renewal will be issued to an applicant reentering the profession after an absence of five years. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry certificate is fifty dollars.
  - c. A two-year certificate renewal will be issued to an initial applicant from out-of-state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out-of-state. Such an applicant must meet the requirements of North Dakota initial certification as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section 67.1-02-02-09. The fee for the reentry certificate is fifty dollars.
  - d. A two-year certificate renewal will be issued to a substitute teacher. A substitute teacher must maintain a valid teaching certificate using the two-year renewal cycle, but is not required to submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is thirty dollars.
2. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota certificate. All five-year certification applications must be accompanied by a fee of ~~seventy-five~~ one hundred dollars. Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status. Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.

- a. Renewal applicants who have completed the four semester hours of credit but have not been contracted for at least thirty days under the five-year certificate will revert to the two-year renewal cycle.
- b. ~~Renewal applicants who have failed to complete the four semester hours of reeducation credit (whether the applicant has been contracted or not), will either not be renewed, or they may agree to be placed on two-year probation. Eight semester hours of reeducation credit must be supplied during the period of the two-year probationary certificate. Applicants failing to complete the probation credit requirements will not be renewed. The fee for the two-year probationary certificate is forty dollars.~~ A renewal applicant who has failed to complete the four semester hours of reeducation credit (whether the applicant has been contracted or not), will either not be renewed, or may agree to be placed on two-year probation. Eight semester hours of reeducation credit must be supplied as a condition of the two-year probationary certificate, four semester hours the first year and four semester hours the second year. An applicant who is employed under contract during the probationary certificate and fails to complete the probation credit requirements will not be renewed. An applicant who is not employed under contract at any time under the probationary certificate may renew on the two-year cycle and may substitute teach, but must begin completing the reeducation requirements immediately if the applicant accepts a full-time or part-time contract.
- c. If recommendations are not adequate to issue a five-year certificate, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. The procedure must be as provided in North Dakota Century Code section 28-32-05. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny recertification.

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

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

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

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

requirement until the individual accepts a contracted position. The fee for the two-year reentry certificate is sixty dollars. Reentry applicants should also refer to information in subsection 1 of section 67.1-02-02-04, regarding two-year and five-year renewals.

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

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

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

67.1-02-02-10. Substitute teachers.

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

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

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

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

## CHAPTER 67.1-02-03

**67.1-02-03-01. Elementary endorsement.** Reeducation of a certified teacher for elementary schoolteaching may be accomplished by completing a college-approved elementary teacher education program of twenty-six semester hours or forty quarter hours including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between grades kindergarten through sixth six. A--verified-successful-year-of-college-supervised-internship-with-credit may-be-substituted-for-student-teaching; The coursework must contain the elementary methods in reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework. Reeducation for the elementary endorsement must be completed prior to or within two years of assignment to teach at the elementary level.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**67.1-02-03-04. Middle school endorsement for grades five through eight.** Endorsement for teaching in a middle school is available on a voluntary basis to teachers certified to teach at the elementary or grades one through twelve levels. The middle school endorsement is mandatory for teachers certified for grades seven through twelve to qualify for work with grades five and six in the subject fields of their certification and voluntary for work with students in grade seven and eight. A review of past coursework will be conducted and a program of studies needed for completion will be established. The middle school

endorsement requires a minimum of ten semester hours including all of the following:

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

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

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

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

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

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

1. **Foundations.** Four semester hours or six quarter hours of college coursework including the following:
  - a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States; different instructional methods to use with different ethnic and language groups.
  - b. Foundations of bilingual education, which involves models of bilingual education; research on the effectiveness, or lack thereof, of bilingual education; history of bilingual education; and significant laws and court decisions affecting language minority students.
2. **Linguistics.** Six semester or nine quarter hours of college coursework including the following areas:
  - a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, and semantics), principles of language change, and development of language families.
  - b. Psycholinguistics, which involves first and second language, oral and written acquisition processes, and learning theories.

- c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.
3. **Methods.** Two semester or three quarter hours of college coursework including the following:
    - a. Methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as second language, from the grammar-translation method to the natural method.
    - b. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.
  4. **Assessment.** Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.
  5. **Field experience.** Two semester or three quarter hours of college coursework in field teaching experience with limited English proficient students in a bilingual or English as a second language setting.

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

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

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

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

## CHAPTER 67.1-02-04

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

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

7. Renewal of interim certificates will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a certified person for the position.
8. Renewal of the interim certificate, if permitted, is contingent upon presentation of at least eight semester hours or twelve quarter hours of additional college credit toward completion of the requirements for regular certification as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
9. The fee for the interim certificate is one hundred dollars for each year the certificate is issued.
10. Interim certification is to address documented shortage areas only. Interim certification may not be issued to applicants who have failed to meet the deadlines or conditions of their regular certification renewal.
11. Initial applicants for interim certification must also submit to the fingerprint background check as stated in subsection 10 of section 67.1-02-02-02.

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

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

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

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

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

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

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

## CHAPTER 67.1-02-05

### 67.1-02-05-03. Reserve officers' training corps instructors.

Reserve officers' training corps instructors must have--a--military science--degree--and--will submit verification to the education standards and practices board that they meet the military requirements for junior ROTC instructors. Individuals meeting these requirements receive certification with a restriction to that area.

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

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

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

### 67.1-02-05-04. Endorsements, added degrees, and restrictions.

The North Dakota educator's professional certificate is issued as described in section 67.1-02-02-02. This certificate qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. The endorsements could be recently acquired college granted majors or minors or a new degree, endorsements in kindergarten, elementary, middle school, bilingual, secondary, or any other endorsement issued by the education standards and practices board. Added degrees and endorsements must be obtained through state-approved teacher education programs. If--a certificate--holder--requests--the--addition--of--an--endorsement--to--a certificate--at--any--time--other--than--renewal--a--fee--of--thirty--five--dollars must--accompany--the--request--for--the--addition--No--additional--fee--for--an endorsement--will--be--assessed--if--any--endorsement--is--added--at--a--regularly scheduled--renewal--A one-time, nonrefundable review fee of fifty dollars must accompany the request to add an endorsement.

A--newly--acquired--major--or--minor--or--new--degree--may--be--added--between renewal--periods--for--a--fee--of--seventy--five--dollars--An--additional--five years--is--also--added--to--the--certificate--expiration--date--at--the--time--of the--addition--of--the--new--major--minor--or--degree--No--additional--fee--for an--added--degree--may--be--assessed--if--the--degree--is--added--at--a--regularly scheduled--renewal--

Official--duplicate--copies--of--lost--certificates--will--be--provided--at--a cost--to--the--holder--of--twenty--dollars--Individuals--who--hold--life certificates--under--section--67.1-02-02-01--may--add--degrees--or--endorsements to--the--education--standards--and--practices--board--certification--records--at no--charge--through--the--submission--of--official--transcripts--Individuals wishing--to--obtain--an--official--duplicate--of--their--life--certificate including--added--degrees--or--endorsements--can--obtain--the--copy--by--paying the--twenty--dollar--duplicate--certificate--fee--

A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts and paying the regular renewal fee of forty dollars for those renewing to two-year

certificates on one hundred dollars for those renewing to five-year certificates. An additional two-year or five-year extension, respectively, is added to the certificate expiration date at the time of the addition of the new major, minor, or degree.

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

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

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

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

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

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



**TITLE 69**  
**Public Service Commission**



MAY 1999

CHAPTER 69-05.2-01

**69-05.2-01-02. Definitions.** The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

1. "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include the

pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
6. "Best technology currently available" means equipment or techniques which will:
  - a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.
  - b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values and achieve enhancement of those resources where practicable.
  - c. The term includes equipment or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
  - d. The term includes construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and sedimentation pond design.
  - e. The commission has the discretion to determine the best technology currently available on a case-by-case basis.
7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.
8. "Cemetery" means any area of land where human bodies are interred.
9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
11. "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It

includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

12. "Coal processing waste" means earth materials which are wasted and separated from product coal during cleaning, concentrating, or other processing or preparation of coal.
13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank authorized to do business in North Dakota.
14. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process (oxidation), accompanied by the evolution of heat and a significant temperature rise.
15. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
16. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
17. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
18. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of

complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.

19. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies, and interprets for use the soils in a given area. The survey must meet the national cooperative soil survey standards and is the type of survey that is made for operational conservation planning by the United States department of agriculture natural resource conservation service in cooperation with agencies of the state and, in some cases, other federal agencies. If the survey is not available and a permit applicant is required to have a survey made, the map scale must be 1:20,000.
20. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
21. "Cumulative impact area" means the surface and ground water systems which may be affected until final bond release by:
  - a. The proposed operation and all existing surface coal mining and reclamation operations;
  - b. Any operations for which a permit application has been submitted to the regulatory authority; and
  - c. All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.
22. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, wildlife habitat, fire protection, flood control, and water supply.
23. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.
24. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. Areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance

required by North Dakota Century Code chapter 38-14.1 and this article is released.

25. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
26. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
27. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
28. "Employee" means, for purposes of restrictions on financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, commission members, or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; and members of advisory boards or commissions established in accordance with state laws or regulations to represent multiple interests, such as the North Dakota reclamation advisory committee.
29. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
30. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
  - a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.

- b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.
  - c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel floodplain and adjacent low terraces.
  - d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
  - e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of floodplains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.
31. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.
32. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
33. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.

34. "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow, or the diversion of flows in which the surface of the soil is largely covered by a sheet of water.
35. "Fragile lands" means geographic areas containing natural, ecologic, scientific, paleontologic, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.
36. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
37. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
38. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
39. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.
40. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
41. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

42. "Historic lands" means areas containing historic, cultural, or scientific resources. Examples include archaeological sites, national historic landmarks, places listed on or eligible for listing on the state historic sites registry or the national register of historic places, places having religious or cultural significance to native Americans or religious groups or places for which historic designation is pending.
43. "Historically used for cropland" means:
- a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
  - b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
  - c. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.
44. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.
45. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
46. "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid materials.

47. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
48. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child, and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.
49. "Industrial and commercial" means, for land use purposes, land used for:
- a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.
  - b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.
50. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
51. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.
52. "Knowingly" means, with respect to individual civil penalties, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that the act or omission constituted a violation, failure, or refusal.
53. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land.

Land uses may be identified in combination when joint or seasonal uses occur.

54. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
55. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.
56. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
57. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
58. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.
59. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
60. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
61. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
62. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal mining operations proposed to be conducted during the term of the permit within the proposed permit area.

63. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
64. "Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in subdivisions a and b:
- a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts surface coal mining operations.
  - b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant surface coal mining operation is conducted:
    - (1) Being an officer or director of an entity;
    - (2) Being the operator of a surface coal mining operation;
    - (3) Having the ability to commit the financial or real property assets or working resources of an entity;
    - (4) Being a general partner in a partnership;
    - (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
    - (6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.
65. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.
66. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

67. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
68. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
69. "Permanent impoundment" means an impoundment requested for retention as part of the postmining land use by the surface owner and approved by the commission and, if required, by other state and federal agencies.
70. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
  - a. Any person who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
  - b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
  - c. Any federal, state, or local governmental agency.
71. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.
72. "Prime farmland" means those lands defined by the secretary of agriculture in 7 CFR 657 and historically used for cropland. Prime farmlands are identified based on cooperative soil surveys and soil mapping units designated as prime farmland by the natural resource conservation service.
73. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
74. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.

75. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
76. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel conditions; and the aquatic habitat on the permit area and adjacent areas.
77. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
78. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
79. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
80. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
81. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.
82. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.
83. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
84. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
85. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement

areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

86. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
87. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.
88. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.
89. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
90. "Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by surface mining activities, providing a water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes providing an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supplies.
  - a. Upon agreement by the permittee and the water supply owner, the obligation to pay such excess operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.
  - b. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative

water source is available and could feasibly be developed. If this approach is selected:

(1) Written concurrence must be obtained from the water supply owner; and

(2) When final bond release is requested for the tract of land that contained the premine water supply, the newspaper notice and the letters sent to property owners and governmental agencies pursuant to subsection 1 of North Dakota Century Code section 38-14.1-17 must identify the approximate location of the premine water supply and clearly state that the permittee does not intend to replace the water delivery system.

Based on comments that are received on the final bond release application, the commission will determine whether or not a replacement water delivery system is needed to protect the public interest. If the commission determines that a replacement water delivery system is needed, the permittee must install the water delivery system before final bond release will be granted.

91. "Residential" means, for land use purposes, single-family and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
- ~~91-~~ 92. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.
- ~~92-~~ 93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.
- ~~93-~~ 94. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

- 94- 95. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with this article and including, but not limited to, a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.
- 95- 96. "Shelterbelt" means a strip or belt of trees or shrubs planted by man in or adjacent to a field or next to a farmstead, feedlot, or road. Shelterbelt is synonymous with windbreak.
- 96- 97. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:
- a. An environmental harm is any adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.
  - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.
  - c. An environmental harm is significant if that harm is appreciable and not immediately reparable.
- 97- 98. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.
  - b. Agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce.
  - c. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants, or cultural interests.

- 98- 99. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
- 99- 100. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant and where leaching of soluble or suspended particles is the greatest.
  - b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
  - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
- ~~100~~-101. "Spoil" means overburden that has been disturbed during surface coal mining operations.
- ~~101~~-102. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
- ~~102~~-103. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
  - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
  - c. Mottling of the soils in the root zones;
  - d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
  - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

- ~~103~~-104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities.
- ~~104~~-105. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
- ~~105~~-106. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.
- ~~106~~-107. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
- ~~107~~-108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.
- ~~108~~-109. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
- ~~109~~-110. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
- ~~110~~-111. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
- ~~111~~-112. "Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the commission to remain as part of the postmining land use.
- ~~112~~-113. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
- ~~113~~-114. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or

microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

- 114-115. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
- 115-116. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.
- 116-117. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all floodplains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meters] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.
- 117-118. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.
- 118-119. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.
- 119-120. "Valid existing rights" means:
- a. Except for roads:
    - (1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the permit applicant to produce coal by a surface coal mining operation; and
    - (2) The person proposing to conduct surface coal mining operations on such lands either:
      - (a) Had been validly issued or had made a good faith attempt to obtain, on or before August 3, 1977,

all state and federal permits necessary to conduct such operations on those lands; or

- (b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

b. For roads:

- (1) A recorded right of way, recorded easement, or a permit for a road recorded as of August 3, 1977; or
- (2) Any other road in existence as of August 3, 1977.

c. Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same surface mining activities for which the applicant claims a valid existing right.

d. "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.

~~120-~~121. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the natural resource conservation service that has been historically used for cropland.

~~121-~~122. "Violation, failure, or refusal" means, with respect to individual civil penalties:

- a. A violation of a condition of a permit issued by the commission; or
- b. A failure or refusal to comply with any order issued under North Dakota Century Code section 38-14.1-28, or any order incorporated in a final decision issued by the commission under North Dakota Century Code chapter 38-14.1, except an order incorporated in a decision issued under subsection 1 of North Dakota Century Code section 38-14.1-29.

~~122-~~123. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

- ~~123-124.~~ "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.
- ~~124-125.~~ "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions committed by a person who intends the result which actually occurs.
- ~~125-126.~~ "Willfully" means, with respect to individual civil penalties, that an individual acted:
- a. Either intentionally, voluntarily, or consciously; and
  - b. With intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.
- ~~126-127.~~ "Woodland" means land where the primary premining natural vegetation is trees or shrubs.
- ~~127-128.~~ "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

**History:** Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999.

**General Authority:** NDCC 38-14.1-03, 38-14.1-38

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

#### **69-05.2-01-03. Promulgation of rules - Notice - Hearing.**

1. The commission may propose new rules under this article or propose amendments or repealers of any rule under this article and will hold a public hearing in accordance with the procedures of this section.
2. Any person or governmental agency may petition the commission to adopt, amend, or repeal any rule under this article. Upon receipt of the petition, the commission will determine if the petition provides a reasonable basis for proposing the issuance, amendment, or repeal of a rule.
3. If the petition has a reasonable basis, the commission will propose the rule, amendment, or repealer and hold a public hearing on the proposal.
4. The commission will issue a notice of the public hearing which will:

- a. Furnish a brief explanation of the purpose of the proposed rule.
  - b. Specify a location where the text of the proposed rule may be reviewed.
  - c. Advise all interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony.
  - d. Provide the address to which written comments may be sent.
  - e. Specify the date, time, and place of the hearing.
5. The commission will publish notice of hearing twice in the official newspapers of each county in which surface coal mining operations occur and each daily newspaper of general circulation in the state. The commission will file the notice of hearing with the legislative council. The commission will cause the ~~first~~ last publication and the filing with the legislative council to occur at least thirty days before the hearing.
  6. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close at the end of the public hearing, unless extended by the commission.
  7. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; May 1, 1999.

**General Authority:** NDCC 28-32-02, 38-14.1-03

**Law Implemented:** NDCC 28-32-02, 38-14.1-34, 38-14.1-41

CHAPTER 69-05.2-05

**69-05.2-05-09. Permit applications - Permit-monitoring-plans-- Consolidation for multiple permit operations.** The commission will may allow monitoring certain information and plans required by this article and North Dakota Century Code chapter 38-14.1 to be consolidated by the permittee into one a single monitoring-plan document for each surface coal mining and reclamation operation subject to the following requirements:

1. The consolidation of information and plans will be limited to sections of the permit application where the same information and plans cover more than one permit area. Each consolidated monitoring-plan document is subject to the approval procedures established for permit revisions.
2. Each mining permit must be revised to describe the specific monitoring information and plans to be consolidated into a single monitoring-plan document covering the entire surface coal mining and reclamation operation under permit.
3. Each consolidated monitoring-plan document is subject to review by the commission at the time of midterm review or renewal for each permit covered by the consolidated monitoring-plan document, in accordance with section 69-05.2-11-01.
4. A permittee may propose modifications to a consolidated monitoring-plan document by filing a permit revision application relating to the most recently issued permit covered by the consolidated monitoring-plan document.

**History:** Effective July 1, 1995; amended effective May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-13

CHAPTER 69-05.2-09

**69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.**

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:
  - a. ~~Delineate the watershed boundaries within the permit and adjacent areas.~~
  - b. ~~Identify by watershed and delineate each mining activity along with an estimate of the affected area associated with each disturbance type.~~
  - e. Identify and show on a map of appropriate scale the locations of proposed ponds or water, impoundments, and diversions, whether temporary or permanent, and include:
    - (1) The purpose of the structure. Each watershed boundary within the permit and adjacent areas.
    - (2) The name and size in acres [hectares] of the watershed affecting the structure. Proposed disturbance boundaries within each watershed and the area of each watershed.
    - (3) ~~The runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. The plan should specify baseflow if appropriate.~~
    - (4) ~~The estimated sediment yield of the contributing watershed, calculated according to subsection 2 of section 69-05.2-16-09, and sediment storage capacity of the structure.~~
    - (5) ~~Proposed structure operations and maintenance.~~
    - (6) ~~Preliminary plan view and cross section of the structure, to an appropriate scale, including anticipated spillway types and relative locations.~~
    - (7) ~~A certificate and schedule of dates that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:
      - (a) Detailed design plans for structures scheduled for construction within the first year of the~~

permit---term---must---be---submitted---with---the  
application:

(b)---Detailed---design---plans---for---a---structure---must---be  
approved---by---the---commission---prior---to  
construction:

b. Provide the following preliminary information for each pond or impoundment:

(1) The purpose of the structure.

(2) A typical cross section of the proposed structure.

(3) The name and size in acres [hectares] of the watershed affecting the structure.

(8) (4) Other preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

c. If underground mining operations occurred in the area, include a survey describing the potential effect of subsidence on the structure from the past underground mining activities.

d. Identify the location of all proposed diversions along with detailed design specifications, including maps, cross sections, and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the permit area to achieve compliance with sections 69-05.2-16-06 and 69-05.2-16-07.

e. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable and plans to remove each structure.

e. Include a statement that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:

(1) Detailed design plans for structures scheduled for construction within the first year of the permit term must be submitted with the application.

(2) Detailed design plans for a structure must be approved by the commission prior to construction.

f. Identify the location of proposed temporary coal processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.

- g. Identify the location of proposed coal processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
- (1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
  - (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.
  - (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
  - (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.
- h. Include a statement that the plan has been prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor experienced in the design of impoundments. The plans must be certified as meeting the requirements of this article using current, prudent engineering practices and any design requirements established by the commission.
2. The application must contain detailed design plans for each structure identified in paragraph 1 of subdivision e e of subsection 1. These plans must:
- a. Meet all applicable requirements of sections 69-05.2-16-06, 69-05.2-16-07, 69-05.2-16-08, 69-05.2-16-09, 69-05.2-16-10, and 69-05.2-16-12.
  - b. Identify by watershed each mining activity along with an estimate of the affected area associated with each disturbance type.
  - c. Provide the total runoff and peak discharge rates attributable to the storm or storms for which the

structure is designed, including supporting calculations. The plan should specify baseflow, if appropriate.

- d. The estimated sediment yield of the contributing watershed, calculated according to subsection 2 of section 69-05.2-16-09, and sediment storage capacity of the structure.
- e. Provide, at an appropriate scale, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, outlets, instrument locations, and slope protection. The plans must also show the measurement of the minimum vertical distance between the crest top of the impounding structure and the reservoir surface at present and under design storm conditions, ~~sediment-or-stagnant~~ permanent pool level, water-level, and other pertinent information.
- e- f. Include graphs showing elevation - area - capacity curves to the top of the embankment.
- d- g. Describe the spillway features and include stage discharge curves and calculations used in their determination.
- e- h. ~~Include--the--computed--minimum--safety--factor--range--for--the--slope--stability--of--each--impounding--structure--which--meets--or--exceeds--the--criteria--of--subsection--17--of--section--69-05.2-16-09.~~ If an impoundment meets the size or other criteria of subsection 17 or 18 of section 69-05.2-16-09, include a stability analysis of the structure. The stability analysis must include strength parameters, pore pressures, and long-term seepage conditions. The plan must also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.
- f- i. Demonstrate that detention time criteria of section 69-05.2-16-09 can be met, if applicable.
- g- j. Describe any geotechnical investigations, design, and construction requirements of the structure including compaction procedures and testing, including any direct connections of the impoundment basin to ground water flow in the area.
- k. If an impoundment meets the size or other criteria of subsection 17 of section 69-05.2-16-09, include a copy of the plan sent to the district manager of the United States mine safety and health administration.

- l. Describe proposed structure operations, maintenance and, if appropriate, a timetable for removal and reclamation plans.
- m. Provide detailed design specifications for diversions, including maps, cross sections, and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the permit area or feeding into the contributing drainage of an impoundment.
- h= n. Include additional information as necessary to enable the commission to completely evaluate the structure.

**History:** Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

## CHAPTER 69-05.2-13

**69-05.2-13-01. Performance standards - General requirements - Coal production and reclamation fee report.** ~~The permittee shall furnish the commission a copy of the Coal Production and Reclamation Fee Report submitted to the office of surface mining, reclamation, and enforcement within thirty days after the end of each calendar quarter.~~ Repealed effective May 1, 1999.

**History:** ~~Effective August 1, 1980; amended effective May 1, 1990.~~

**General Authority:** NDCC-38-14.1-03

**Law Implemented:** NDCC-38-14.1-03

**69-05.2-13-02. Performance standards - General requirements - Annual map.** The permittee shall submit two copies of an annual map to the commission for all permit areas by each ~~February~~ March fifteenth. The scale must be 1:4,800 or other scale approved by the commission. The information must be reported for each calendar year until all bond has been released. The map, or maps if necessary, must clearly show the following and include a legend specifying the number of acres [hectares] in each category:

1. Each permit area and section ~~and quarter lines~~ line.
2. Activities during the year for each permit, including:
  - a. Acreage [hectarage] affected.
  - b. Acreage [hectarage] where suitable plant growth material removal operations have been completed.
  - c. Acreage [hectarage] where coal mining operations are completed and the contemporaneous reclamation requirement of subsection 14 of North Dakota Century Code section 38-14.1-24 has been initiated.
  - d. Acreage [hectarage] where grade approval has been obtained.
  - e. Acreage [hectarage] where suitable plant growth material redistribution operations have been completed.
  - f. Acreage [hectarage] planted where the ten-year revegetation period has been initiated.
  - g. Acreage [hectarage] where bond has been partially released and the stage of release.
  - h. Acreage [hectarage] where bond has been totally released.

3. Location of suitable plant growth material stockpiles. Supporting information must include ownership, date seeded, type of material in each stockpile (topsoil or subsoil), and estimated cubic yards [meters] for each stockpile.
4. Cumulative information on the mining and reclamation activities that have occurred within each permit area which include:
  - a. Affected acreage where topsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.
  - b. Affected acreage where subsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.
  - c. Acreage [hectarage] planted where the ten-year revegetation period has been initiated and the year of initiation.
  - d. Acreage [hectarage] where bond has been partially released and the stage of release.
  - e. A tabular listing of acreage [hectarage] where bond has been totally released.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1994; June 1, 1997; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-27

**69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.**

1. The permittee shall affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved where practicable on the basis of information gathered and management plans developed under sections 69-05.2-08-15 and 69-05.2-09-17. The applicant permittee shall submit a report to the commission with management plan results and data derived from the monitoring plan for the two previous calendar year--to--the--commission years by each February March fifteenth in even-numbered years.

2. No surface mining activity may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the United States department of the interior or which is likely to result in the destruction or adverse modification of designated critical habitats of those species in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.]. The permittee shall promptly report to the commission the presence in the permit area of any state-listed or federally listed endangered or threatened species of which the permittee becomes aware. Upon notification, the commission will consult the United States fish and wildlife service, the state game and fish department, and the operator, and then decide whether, and under what conditions, the operator may proceed.
3. No surface mining activity may be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the commission the presence in the permit area of any bald or golden eagle, or bald or golden eagle nest or eggs, of which the permittee becomes aware. Upon notification, the commission will perform the consultation and decision process specified in subsection 2.
4. Nothing in this article authorizes the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.] or the Bald Eagle Protection Act, as amended [16 U.S.C. 668 et seq.].
5. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to activities on the permit area follow the guidelines in Environmental Criteria for Electric Transmission Systems (United States department of the interior, United States department of agriculture (1970)), or in alternative guidance manuals approved by the commission. Design and construction of distribution lines must follow REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.
6. The permittee shall, to the extent possible using the best technology currently available:
  - a. Locate and operate haul and access roads, sedimentation ponds, diversions, stockpiles, and other structures to avoid or minimize impacts to important fish and wildlife species and their habitats and to other species protected by state or federal law.
  - b. Create no new barrier in known and important wildlife migration routes.

- c. Fence, cover, or use other appropriate methods to exclude wildlife from ponds containing hazardous concentrations of toxic-forming materials.
- d. Reclaim, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.
- e. Reclaim, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.
- f. Afford protection to aquatic communities by avoiding stream channels as required in section 69-05.2-16-20 or reclaiming stream channels as required in section 69-05.2-16-07.
- g. Not use pesticides in the area during surface mining and reclamation activities, unless specified in the operation and reclamation plan or approved by the commission on a case-by-case basis.
- h. To the extent possible prevent, control, and suppress range, forest, and coal fires not approved by the commission as part of a management plan.
- i. If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of chapter 69-05.2-22:
  - (1) Select plant species to be used on reclaimed areas, based on the following criteria:
    - (a) Their proven nutritional value for fish and wildlife.
    - (b) Their uses as cover for fish and wildlife.
    - (c) Their ability to support and enhance fish and wildlife habitat after bond release.
  - (2) Distribute plant groupings to maximize benefits to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.
- j. Where cropland is to be the postmining land use and where appropriate for wildlife and surface owner crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands must be preserved when feasible or recreated consistent with the reclamation plan and the postmining land use.

- k. Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

## CHAPTER 69-05.2-15

### 69-05.2-15-02. Performance standards - Suitable plant growth material - Removal.

1. Timing. Suitable plant growth material must be removed after vegetative cover that would interfere with its use is cleared from the areas to be disturbed. To prevent suitable plant growth materials from becoming contaminated by other materials, all suitable plant growth materials to be saved must be separately removed and segregated as required by subsection 2 prior to any further surface disturbance.
2. Materials to be removed and saved.
  - a. The suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by section 69-05.2-08-10 must be removed and segregated in two separate operations, unless otherwise approved by the commission. The topsoil removal operation for an area must be completed before subsoil removal begins or before any other disturbances occur in that area. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved must be removed and segregated. Further disturbances which significantly alter an area must not begin until the subsoil and other suitable strata removal operations for that area have been completed and approved by the commission. However, the commission may waive the approval of subsoil removal operations if the operator demonstrates, in a detailed soil removal plan, surplus subsoil is available and that subsoil to be removed has good and relatively uniform characteristics. A request for such a waiver must be included as part of a detailed soil removal plan or permit revision application that contains the necessary information.
  - b. (1) All topsoil must be removed from all areas to be disturbed, except in situations as provided by subsection 4.  
  
(2) Sufficient subsoil must be removed from all areas to be disturbed to satisfy the redistribution requirements of subsection 4 of section 69-05.2-15-04.
3. Materials to be removed in shallow suitable plant growth material situations. If the thickness of suitable plant growth materials averages less than six inches [15.24

centimeters], the commission may specify other suitable strata to be removed and treated as suitable plant growth material.

4. Suitable plant growth material removal will not be required for minor disturbances which occur at the site of small structures, such as power poles, signs, or fence lines.
5. Suitable plant growth material supplements and substitutes.
  - a. Topsoil supplements. Selected subsoil or other suitable strata may be used as a supplement to topsoil if the permittee or operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation than the available topsoil. This demonstration must include the vertical and areal extent of supplemental materials and determinations of pH, electrical conductivity, sodium adsorption ratio, percent coarse fragments, percent organic matter, texture, and other chemical or physical analyses as required by the commission. The operator may be required by the commission to include the results of any field trials or greenhouse tests to demonstrate the feasibility of using a mixture of such materials. The permittee or operator shall also demonstrate that the resulting medium is the best available soil medium in the permit area to support revegetation.
  - b. Subsoil supplements. The permittee or operator may be required to use other suitable strata to supplement subsoil materials if the commission determines additional suitable materials for spreading over affected areas are necessary to meet the redistribution requirements of subdivision a of subsection 4 of section 69-05.2-15-04, provided other suitable strata are available. Samples of the strata to be saved must be taken at sufficient locations to determine the areal extent of the suitable strata. The sampling locations must be approved by the commission. Chemical and physical analyses of the samples taken must include pH, electrical conductivity, sodium adsorption ratio, and textural analysis as required by the commission.
  - c. Subsoil substitutes. Selected overburden materials may be substituted for subsoil if the operator demonstrates to the commission that the resulting soil medium is equal to or more suitable than the available subsoil for sustaining vegetation. Overburden sampling and chemical and physical analyses must be provided by the operator as required by the commission.
  - d. Supplemental and substitute materials must be removed, segregated, and redistributed according to the applicable

requirements for suitable plant growth material in this chapter.

**History:** Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987; May 1, 1990; January 1, 1993; July 1, 1995; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-15-04. Performance standards - Suitable plant growth material - Redistribution.**

1. After final grading is approved under section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land must be scarified or otherwise treated, if necessary, to eliminate slippage surfaces or to promote root penetration.
2. Subsoil must then be redistributed as approved by the commission in a manner that:
  - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
  - b. Prevents excess compaction of the spoil and subsoil.
3. Following subsoil respreading, topsoil must be redistributed as approved by the commission in a manner that:
  - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
  - b. Prevents excess compaction of the suitable plant growth materials.
4. Amount of suitable plant growth materials to be redistributed.
  - a. In areas where the graded spoil materials occur:
    - (1) All suitable plant growth material inventoried and removed according to the soil survey and any other suitable strata required to satisfy section 69-05.2-21-03 must be uniformly redistributed; or
    - (2) The amount of redistributed suitable plant growth material must be based on the graded spoil characteristics as follows:

Suitable Plant Growth Material  
Redistribution Thickness

Spoil Properties

Total Redistribution Thickness

Texture	Sodium Adsorption Ratio (SAR)	Saturation Percentage {SP}	(Topsoil Plus Subsoil)	
			Average in Inches	(Centimeters)
Medium*	< 12	***	24	(61)
Coarse**	< 12	***	36	(91)
***	12 - 20	< 95	36	(91)
***	<del>12 - 20</del>	<del>&gt; 95</del>	<del>42</del>	<del>(107)</del>
***	> 20	***	48	(122)

- \* Loam or finer
- \*\* Sandy loam or coarser
- \*\*\* Not applicable

(a) The minimum thickness of redistributed suitable plant growth material in any random location must be within six inches [15.24 centimeters] of the average thickness required for an area based on the graded spoil characteristics as determined by representative sampling. However, the commission may approve redistribution thicknesses less than those listed in the table if chemical and physical analyses and any available field trials, greenhouse test results or current research findings demonstrate that the overburden materials are equal to or more suitable than the subsoil for sustaining vegetation. In addition, the commission may approve a lesser redistribution thickness if an insufficient amount of material exists based on the results of the soil survey and the availability of other suitable strata pursuant to subdivision b of subsection 5 of section 69-05.2-15-02.

(b) The texture, sodium adsorption ratio, and saturation percentage of the graded spoil materials will be determined by a commission evaluation of the premine overburden data, sample analyses of the graded spoil conducted by the operator, or by a combination of these methods.

~~(c) -- This paragraph is effective only for those areas disturbed prior to the year 1999.~~

b. The amount of redistributed suitable plant growth materials in associated disturbance areas where graded

spoil materials do not occur must be based on the amount removed under subsection 2 of section 69-05.2-15-02.

5. Following the respreading of suitable plant growth materials, appropriate measures must be taken to protect the area from wind and water erosion.
6. The suitable plant growth material and other suitable strata and substitutes saved from property owned by one party must be respread within the boundaries of that property if the surface ownership of the permit area is split between two or more parties, unless the parties otherwise agree.

**History:** Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; June 1, 1997; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

## CHAPTER 69-05.2-16

### 69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds must be used individually or in series and:
  - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
  - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
  - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds must provide adequate sediment storage volume. Sediment storage volume must be determined using the universal soil loss equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds must provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting materials must be included in the permit application.
4. Dewatering. The stored water must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device may not be lower than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures do not relieve the operator from compliance with applicable effluent limitations.
7. For sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event),

there must be no spillway outflow as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit.

8. Sediment must be removed from sedimentation ponds on a periodic basis in order to maintain an adequate storage volume for the design event.
9. An appropriate combination of principal and emergency spillways or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, six-hour precipitation event for a temporary impoundment, a fifty-year, six-hour precipitation event for a permanent impoundment, or a larger event specified by the commission. The spillways must be capable of safely discharging the required event when the impoundment is at high water elevation. Commission approval of open channel spillway grades and allowable velocities must be obtained and velocities must be nonerosive. Earth or grass lined spillways may be used only where sustained flows are not expected.
10. The minimum elevation at the top of the settled embankment must be one foot [30.48 centimeters] above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this minimum elevation requirement applies at all times.
11. The constructed height of the dam must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against settlement.
12. The minimum top width of the embankment may not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, or  $(H+10.7)/5$ , where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The upstream side slope of the settled embankment may not be steeper than a horizontal to vertical ration of 3:1 and the downstream side slope of the settled embankment may not be steeper than a horizontal to vertical ration of 2:1.
14. The foundation area must be cleared of all organic matter, all surfaces sloped to no steeper than a horizontal to vertical ration of 1:1, and the entire foundation surface scarified. Cutoff trenches must be installed if necessary to ensure stability.

15. The fill material must be free of sod, large roots, other large pieces of vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers in the thicknesses required to facilitate compaction and meet the design requirements of this section. Fill adjacent to structures, pipe conduits, and drainfill or antiseep collars must be compacted to a density equal to that of the surrounding fill by hand tamping or by using manually directed power tampers or plate vibrators. Compaction must be conducted as specified in the approved design. In lieu of the specific design requirements of this subsection and subsections 11 through 14, the operator may demonstrate that the design of the structure has a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.
17. If a proposed impoundment can meet the size and other criteria of 30 CFR 77.216, ~~or is located where failure would be expected to cause loss of life or serious property damage~~, the following additional requirements must be met:
  - a. An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
  - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
  - c. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.
  - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met, ~~and a copy of the plan sent to the district manager of the United States mine safety and health administration under that title submitted to the commission as part of the permit application.~~
18. If an impoundment meets the class B or C criteria for dams (those located where failure would be expected to cause loss of life or serious property damage) in the United States department of agriculture, natural resource conservation service technical release no. 60 (TR-60), Earth Dams and Reservoirs, 1985, the following apply:

- a. The emergency spillway must comply with freeboard hydrograph criteria found in the minimum emergency spillway hydrologic criteria table in TR-60, or greater event specified by the commission.
- b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
- c. Foundation testing, as well as any necessary laboratory testing of foundation material, must be performed to determine design requirements for foundation stability.
- d. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.

19. Impoundment inspections.

- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b ~~of this subsection~~. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- b. Inspections must be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
- c. After each inspection the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.
- d. A copy of the inspection reports must be maintained at or near the minesite.

- ~~19.~~ 20. The embankment, including the surrounding areas and diversion ditches disturbed or created by construction, must be stabilized with respect to erosion and sudden drawdown by a vegetative cover or other means immediately after the embankment is completed. The active upstream face where water will be impounded may be riprapped or otherwise stabilized to protect the embankment from erosion and sudden drawdown.

Areas where the reestablishment of vegetation is not successful or where rills and gullies develop must be repaired and revegetated according to section 69-05.2-15-06.

- ~~20:~~ 21. In addition to the requirements of subsection ~~18~~ 19, all impoundments meeting the criteria of ~~subsection~~ subsections 17; and 18 must be examined according to 30 CFR 77.216-3. Other impoundments must be examined at least quarterly by a qualified person for appearance of erosion, structural weakness, and other hazardous conditions. The annual inspection required by subsection ~~18~~ 19 will be considered one of the examinations required by this subsection.
- ~~21:~~ 22. Plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments must be submitted to the commission. Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate a hazard to public health, safety, or the environment.
- ~~22:~~ 23. Sedimentation ponds may not be removed until authorized by the commission and the disturbed area has been stabilized and revegetated. The structure may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion. When the pond is removed, the affected land must be reclaimed, unless the pond has been approved by the commission for retention. If the commission approves retention, the pond must meet all the requirements for permanent impoundments of section 69-05.2-16-12.

**History:** Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

## CHAPTER 69-05.2-19

### 69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

1. All noncoal waste materials disposed of within a permit area and that are required to be permitted under solid waste management rules of the state department of health must be disposed of according to those rules and this chapter. Before disposal operations begin, the commission must be advised of plans to develop or modify a noncoal waste disposal site.
2. Noncoal wastes including concrete products, plastic material, abandoned mining machinery, wood materials, and other nonhazardous materials generated during mining and noncoal waste materials from activities outside the permit area, such as municipal wastes, must be placed and stored in a controlled manner in a designated approved portion of the permit area. Placement and storage of all types of noncoal wastes, including any hazardous materials, must ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the state department of health. Solvents, grease, lubricants, paints, flammable liquids, and other combustible materials must be disposed off the permit area except for land treatments of small spills as approved by the state department of health.
3. Disposal sites in the permit area must be designed and constructed to ensure that leachate and drainage from the noncoal waste areas does not degrade surface or underground water. Wastes must be routinely compacted and covered to prevent combustion and windborne waste. When disposal is completed, two feet [60.96 centimeters] of cover or a greater thickness required by the commission must be placed over the site, slopes stabilized, suitable plant growth material respread and revegetation accomplished. Site operation must comply with all local and state requirements.
4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of any coal outcrop or coal storage area.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

## CHAPTER 69-05.2-22

### 69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
  - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
  - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
  - c. For prime farmland, annual average crop production from the permit area must be equal to or greater than that of

the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years.

- d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
  - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for the last two consecutive years of the responsibility period:
    - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
    - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must be equivalent to that of the approved standard.
  - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
  - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
  - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
  - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be

achieved during the last two consecutive years of the responsibility period:

- (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period;
  - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
  - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last two consecutive years of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the

last six years of the revegetation responsibility period.

- (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
  - (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard the last two consecutive years of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years of the responsibility period:
- (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
  - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for three

out of five consecutive years starting no sooner than the eighth year of the responsibility period. This alternative does not pertain to success standards for prime farmlands.

5. Throughout the liability period the permittee shall:
  - a. Maintain any necessary fences and use proper management practices; and
  - b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

## CHAPTER 69-05.2-28

69-05.2-28-19. Inspection and enforcement - Inspection of inactive surface coal mining operations. The commission will conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining operation. Partial inspections of inactive mines will be conducted as deemed necessary. For the purposes of this section, an inactive surface coal mining operation is one for which:

1. Surface coal mining operations have permanently ceased and all disturbed areas have been reclaimed and vegetation has been established in accordance with the approved reclamation plan and the lands are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04; or
2. The commission has granted partial bond release for the disturbed areas pursuant to subsection 7 of section 69-05.2-12-12.

**History:** Effective May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-27

**TITLE 72**  
**Secretary of State**



MAY 1999

CHAPTER 72-01-02

**72-01-02-07. Central notice system.**

1. If no quantity of crops or livestock is designated in the central notice system filing, the filing must be deemed to include all crops or livestock listed.
2. If no crop year is designated in the central notice system filing, the filing must be deemed to include all crop years for the effective period of the filing.
3. A description of the crops or livestock must be included in the central notice system filing if needed to distinguish those covered by the perfected security interest from other crops or livestock owned by the same debtor but not subject to the security interest.
4. A continuation statement of a central notice system filing must be signed by ~~both-the-debtor-and~~ the secured party.

**History:** Effective February 1, 1992; amended effective May 1, 1999.

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

**Law Implemented:** NDCC 41-09-28, 41-09-41



**TITLE 75**  
**Department of Human Services**



**JANUARY 1999**

**CHAPTER 75-02-06**

**AGENCY SYNOPSIS: North Dakota Administrative Code Chapter 75-02-06 Ratesetting for Nursing Home care.**

Subsection 18 of section 75-02-06-01, Definitions: Amends definition of "depreciation guidelines" to reference the current Useful Lives Guide.

Paragraph (8) of subdivision a of subsection 1 of section 75-02-06-02.6, Cost Allocations: Authorizes allocation of laundry costs on the basis of in-house resident days.

Subsection 1 of section 75-02-06-05, Compensation: Clarifies administrator compensation limits.

Subsection 38 of section 75-02-06-12.1, Nonallowable Costs: Repeals the subsection that formerly treated certain interest expense on operating loans as a nonallowable cost.

Subsection 4 of section 75-02-06-14, Resident Days: Increases therapeutic leave allowances.

Subsection 3 and subdivisions a, c, and d of subsection 7 of section 75-02-06-16, Rate Determinations: Converts from using a resident classification review process to using the minimum data set for classifying residents into a payment category; allows the former owner's cost reports to be used in certain change of ownership situations; and specifies the beginning date of a projected property rate.

Section 75-02-06-17, Classifications: Establishes the minimum data set resident classification system.

Section 75-02-06-18, Reviewer Criteria: Repeals reviewer criteria not relevant to establishing minimum data set resident classifications.

Subdivision b of subsection 1 and subsection 6 of section 75-02-06-21, Specialized Rates for Extraordinary Medical Care: Expands application of specialized rates.

**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 appropriate composite economic change index.
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. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
10. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
11. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
12. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
13. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
14. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
15. "Department" means the department of human services.
16. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
17. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
18. "Depreciation guidelines" means the American hospital association's guidelines as published by American Hospital Publishing, Inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1993 1998 edition.

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

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

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

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

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

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

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999.

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

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

#### **75-02-06-02.6. Cost allocations.**

1. Direct costing of allowable costs must be used whenever possible. For a facility that cannot direct cost, the following allocation methods must be used:
  - a. If a facility is combined with a hospital or has more than one license (including basic care), the following allocation methods must be used:
    - (1) Nursing salaries that cannot be reported based on actual costs must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, nursing salaries must be allocated based on revenues for resident services.
    - (2) Salaries for a director of nursing or nursing supervisors that cannot be reported based on actual

costs or time studies must be allocated based on nursing salaries or full-time equivalents of nursing staff.

- (3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents of supervised staff.
- (4) Staff development or inservice trainer salaries must be allocated to nursing and therapies based on the ratio of nursing and therapy salaries to total salaries, to non-long-term care based on the ratio of non-long term care salaries to total salaries, and to administration based on the ratio of total salaries less nursing salaries, therapy salaries, and non-long term care salaries to total salaries.
- (5) Other nursing costs must be allocated based on resident days.
- (6) Therapy costs, other than therapy salaries and purchased services, must be allocated based on the ratio of therapy salaries and purchased services in the nursing facility to total therapy salaries and purchased services.
- (7) Dietary and food costs must be allocated based on number of meals served or in-house resident days.
- (8) Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.
- (9) Activity costs must be allocated based on in-house resident days.
- (10) Social service costs must be allocated based on resident days.
- (11) Housekeeping costs must be allocated based on weighted square footage.
- (12) Plant operation costs must be allocated based on weighted square footage.
- (13) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
- (14) Pharmacy costs for consultants must be allocated based on in-house resident days.
- (15) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding

property, administration, and chaplain, in each facility.

- (16) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center must be allocated using the methodologies set forth in this section for that particular cost center.
  - (17) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.
  - (18) Employment benefits must be allocated based on the ratio of salaries to total salaries.
- b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.
  - c. Malpractice, professional liability insurance, therapy salaries, and purchased therapy services must be direct costed.
  - d. The costs of operating a pharmacy must be included as non-long-term care costs.
  - e. For purposes of this subsection, "weighted square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described in this subsection for that cost category.
2. If a facility cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:
    - a. Salaries, excluding staff development and inservice trainer salaries, must be allocated using time studies. Time studies must be conducted semiannually for a two-week period or quarterly for a one-week period. Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of

time study or averaged for the reporting year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, salaries and employment benefits must be allocated entirely to the indirect care costs, if any of the employee's job duties are included in this cost category. Otherwise, salaries and employment benefits must be other direct care costs.

- b. Staff development and inservice trainer salaries must be allocated to nursing and therapies based on the ratio of nursing and therapy salaries to total salaries and to administration based on the ratio of total salaries less nursing and therapy salaries to total salaries.
  - c. Employment benefits must be allocated based on the ratio of salaries in the cost category to total salaries.
3. A facility that operates or is associated with nonresident-related activities, such as apartment complexes, shall allocate all costs, except administration costs, in the manner required by subsection 1, and shall allocate administration costs as follows:
- a. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, exceed five percent of total facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated on the basis of the percentage of total cost, excluding property, administration, and chaplain costs.
  - b. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, are less than five percent of total facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated to each activity based on the percent gross revenues for the activity is of total gross revenues, except that the allocation may not be based on a percentage exceeding two percent for each activity.
  - c. If the provider can document, to the satisfaction of the department, that none of the facility resources or services are used in connection with the nonresident-related activities, no allocation need be made.
  - d. The provisions of this subsection do not apply to the activities of hospital and basic care facilities associated with a facility.

4. All costs associated with a vehicle not exclusively used by a facility must be allocated between resident-related and nonresident-related activities based on usage logs.

**History:** Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1999.

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

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

#### **75-02-06-05. Compensation.**

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the highest market-driven compensation of an administrator employed by a freestanding facility, with licensed capacity, during the report year, at least equal to the licensed capacity of the smallest facility within the top quartile of all facilities ranked by licensed capacity. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation divided by three hundred sixty-five times the number of calendar days the individual was employed.
2. Compensation includes:
  - a. Salary for managerial, administrative, professional, and other services.
  - b. Amounts paid for the personal benefits of the person, e.g., housing allowance, flat-rate automobile allowance.
  - c. The cost of assets and services the person receives from the facility.
  - d. Deferred compensation, pensions, and annuities.
  - e. Supplies and services for the personal use of the person.
  - f. The cost of a domestic or other employee who works in the home of the person.
  - g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
3. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount normally required to be paid for the same services if provided by a nonrelated

employee. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable compensation on an hourly basis may not exceed the amount determined to be the limitation in subsection 1, divided by two thousand eighty.

4. Costs otherwise nonallowable under this chapter may not be included as personal compensation.

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1999.

**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 education was provided by an accredited academic or technical educational facility;
  - b. The expenses were for materials, books, or tuition;
  - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility, and is in that position; and
  - d. The facility claims the cost of the education at a rate that does not exceed one dollar per hour of work performed by the employee in the position for which the employee received education at the facility's expense, provided the amount claimed per employee may not exceed two thousand dollars per year, or an aggregate of eight thousand dollars, and in any event may not exceed the cost to the facility of the employee's education;
38. ~~Interest--expense--on--the--portion--of--operating--loans--equal--to--nonallowable--costs--incurred--for--the--current--and--prior--reporting--periods;~~ 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; and
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.

**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.

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

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

**75-02-06-14. Resident days.**

1. A resident day is any day for which service is provided or for which payment is ordinarily sought for use of a bed. The amount of remuneration has no bearing on whether a day should be counted.
2. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
  - a. Identification of the resident;
  - b. Entries for all days, and not just by exception;
  - c. Identification of type of day, i.e., hospital, in-house;
  - d. Identification of the resident's classification; and
  - e. Monthly totals by resident, by classifications for all residents, and by type of day.
3. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave. Hospital days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
4. A maximum of ~~eighteen~~ twenty-four therapeutic leave days per individual per rate year may be allowed for payment by the medical assistance program. Therapeutic leave days in excess of ~~eighteen~~ twenty-four per year are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
5. Institutional leave days are not billable to the department and are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
6. Hospital and therapeutic leave days, occurring immediately following a period when a resident was receiving medicare part A benefits in the facility, are not billable to the department and are not resident days unless any payment is

sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.

7. Residents admitted to the facility through a hospice program or electing hospice benefits while in a facility must be identified as hospice residents for census and billing purposes.

**History:** Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999.

**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 subsections 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 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 physically handicapped facilities 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, 1992. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- {1} d. The limit rate for each of the cost categories must be established as follows:
  - {a} (1) Historical costs for the report year ended June 30, 1992, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories.
  - {b} (2) For the rate year beginning January 1, 1997 1998, the limit rate for the direct care cost category is ~~thirty-four~~ thirty-five dollars and ~~eighty-three~~ eighty-one cents, for the other direct care cost category is eleven dollars and ~~fifty-one~~ eighty-three cents, and for the indirect care cost category is twenty-six dollars and ~~three~~ seventy-six cents.
  - {c} (3) For the rate ~~years~~ year beginning ~~January-1,-1998,~~ and January 1, 1999, the limit ~~rates~~ rate established in ~~subparagraph-b~~ paragraph 2:

- (a) For the direct care cost category, must first be multiplied times a factor determined through dividing standardized resident days based on the classifications established using resident classification reviews by standardized resident days based on the classifications established using minimum data set classifications (all as reported in the cost report for the report year ending June 30, 1998) and the result multiplied times the appropriate composite economic change index increase as described in subsection 4; and
- (b) For the other direct care cost category and the indirect care cost category, must be multiplied times the appropriate composite economic change index increase (as described in subsection 4b 4) to establish the limit rate for each cost category.
- (d) (4) For rate years beginning on or after January 1, 2000, the limit rate set for each cost category for the previous rate year must be multiplied times the appropriate composite economic change index increase (as described in subsection 4) to establish the limit rate for each cost category.
- (2) e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- d. f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using actual:
- (1) Actual census for the report year; or ninety
  - (2) Ninety percent of licensed bed capacity available for occupancy--A--licensed--bed--is--not--available--for occupancy--if--the--licensed--bed--is--part--of 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 for-the-period-the--bed--is not-in-service.
- e. g. The department may waive or reduce the application of subdivision d 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 d f.
4. Adjustment factors for direct care, other direct care, and indirect care costs.
- a. An appropriate composite economic change index may 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 limitations of 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 subsection 3.
  - b. For purposes of this section:
    - (1) "Appropriate composite economic change index" means:
      - (a) For the rate year beginning January 1, 1998, and the rate year beginning January 1, 1999, one-half of the increase, if any, in the consumer price index, plus one-half of the increase, if any, in the data resources, incorporated, North Dakota specific nursing home input price index; and
      - (b) For the rate years beginning on or after January 1, 2000, the increase in the consumer price index, if any.
    - (2) The "consumer price index increase" means the percentage (rounded to the nearest one-tenth of one percent) by which consumer price index for urban wage earners and clerical workers (CPI-W), all items, United States city average for the quarter ending September thirtieth of the year immediately preceding the rate year (as prepared by the United States department of labor) exceeds that index for the quarter ending September thirtieth of the second year preceding the rate year.
    - (3) "Data resources, incorporated, North Dakota specific nursing home input price index" means:
      - (a) For purposes of determining the adjustment factor applicable to historical costs under subsection 1, for direct care, other direct care, and indirect care, the composite index for

the eighteen-month period beginning immediately after the report year ends; and

- (b) For purposes of determining the adjustment factor applicable to the limit rates for direct care, other direct care, and indirect care under subsection 3, the composite index for the period beginning January 1, 1998, and ending at the end of the rate year.

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 or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment 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 of this subsection, 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 five 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 five 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 of this subsection.
- (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 five 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 five 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 five 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-paying 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-paying resident from the date the facility charges a private-paying resident the pending decision rate.
- (4) If the pending decision rate paid by a private-paying 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-paying 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, and indirect care, based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective ~~at-the-time~~ 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, and indirect care, 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 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 ~~costs~~ 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 their

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 of this subdivision 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 cost 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 pass-through 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 five 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.

**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 ~~classification-review~~ 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 ~~sixteen-classes~~ thirty-four classifications based on a the resident classification--review assessment. If a resident ~~classification--review~~ 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 ~~classified-as-reduced~~ physical-functioning-C included in group BC1, not classified, until the next required review resident assessment is performed in accordance with subsection 3 ~~for~~. For purposes of determining standardized resident days and, any resident day classified as group BC1 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 reduced-physical-functioning-A group BC1 established rate. A The case-mix weight for establishing the rate for group BC1 is .62. 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 and-five-tenths when determining standardized resident days.
3. Reviews Resident assessments must be ~~conducted~~ completed as follows:
  - a. The facility shall review assess the resident within the first ~~seven~~ fourteen days after any admission or return from an acute hospital stay.
  - b. The facility shall review assess the resident after ~~twenty-five-days,-but-within-thirty-days~~ quarterly after

any admission or return from an acute hospital stay. The quarterly assessment date is 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 date is the last day of that month. The assessment may be completed up to seven days prior to the quarterly assessment date.

e. --The--facility--shall--review--each--resident--twice--each--year. The--reviews--must--be--conducted--six--months--apart--and--must--be--done--according--to--a--schedule--established--by--the--department--for--each--report--year.

d. --The---seven-day--review--must--take--precedence--over--the--thirty-day--review--and--the--biannual--review,--and---the--thirty-day--review--must--take--precedence--over--the--biannual--review. --For--example,--if--resident--A--was--admitted--on--June--first--and--the--biannual--review--was--in--June,--resident--A--may--not--be--included--in--the--June--biannual--review. --On--the--other--hand,--if--the--biannual--review--was--the--second--full--week--in--July,--resident--A--must--be--included,--even--though--resident--A--had---just--had--a--thirty-day--facility--review--on--June--thirtieth.

4. The--resident--classification--review--must--be--completed--based--on--the--following--criteria:

a. --Assign--point--values--for--a--resident's--activities--of--daily--living--in--the--areas--of:

(1) --Eating-----the--process--of--getting--food--by--any--means--into--the--body.

(2) --Transfer---the--process--of--moving--between--positions.

(3) --Toileting---all--processes--involved--with--toileting.

b. --Determine---each---resident's--clinical--group--using--the--following--hierarchy--of--criteria:

(1) --Heavy---rehabilitation-----to---qualify--for--heavy--rehabilitation,--a--resident--must--require--and--receive--restorative--physical--or--occupational--therapy--five--times--per--week--for--a--minimum--of--two--and--one-half--hours--per--week--or--requires--and--is--receiving--intensive--bowel--or--bladder--retraining. ---Residents--receiving--therapy--separately--reimbursable--by--a--third-party--may--not--be--included--in--this--group.

(2) --Special--care-----to--qualify--for--special--care,--a--resident--must--not--qualify--as--heavy--rehabilitation--and--must--have--an--activity--of--daily--living--score--of--five

OR MORE AND ONE OR MORE OF THE FOLLOWING CONDITIONS OR TREATMENTS:

(a) Stage 4 decubitus.

(b) Comatose.

(c) Suctioning.

(d) Nasal-gastric feeding.

(e) Parenteral feeding.

(f) Quadriplegia.

(g) Multiple sclerosis.

(h) Ventilator dependent.

(3) Clinically complex to qualify for clinically complex; a resident must not qualify as special care and must have one or more conditions or treatments characteristic of special care with an activity of daily living score of three or four; or must not qualify for special care and must have one or more of the following conditions or treatments:

(a) Dehydration.

(b) Internal bleeding.

(c) Stasis ulcer.

(d) Terminally ill.

(e) Daily oxygen.

(f) Wound care.

(g) Chemotherapy.

(h) Transfusion.

(i) Dialysis.

(j) Daily respiratory care.

(k) Cerebral palsy.

(l) Urinary tract infection.

(m) Hemiplegia.

~~(4)--Special-behavior---to-qualify-for-special-behavior;-a resident-must-not-qualify-for-clinically-complex--and must-have-one-of-the-following-conditions:~~

~~(a)--Verbal-disruption---level-4+;~~

~~(b)--Physical-aggression---level-4+;~~

~~(c)--Disruptive;-infantile;-or-socially-inappropriate --level-4+;~~

~~(d)--Hallucinations---level-2+;~~

~~(5)--Reduced--physical--functioning----a-resident-who-does not-qualify-for-special-behavior-must--be--classified as--reduced-physical-functioning.--For-a-resident-who has-a-level-4+-rating-for-general-behavior;-one-point must--be--added-to-the-activity-of-daily-living-score assigned-in-subdivision-a-of-subsection-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) Any scheduled toileting or bladder retraining program; and

c. A resident has signs of depression if the resident exhibits at least three of the following:

- (1) Negative statements;
- (2) Repetitive questions;
- (3) Repetitive verbalization;
- (4) Persistent anger with self and others;
- (5) Self deprecation;
- (6) Expressions of unrealistic fears;
- (7) Recurrent statements that something terrible is to happen;
- (8) Repetitive health complaints;
- (9) Repetitive anxious complaints or concerns of nonhealth-related issues;
- (10) Unpleasant mood in morning;
- (11) Insomnia or changes in usual sleep patterns;
- (12) Sad, pained, or worried facial expression;
- (13) Crying or tearfulness;
- (14) Repetitive physical movements;
- (15) Withdrawal from activities of interest; or
- (16) Reduced social interaction.

6. The major categories in hierarchical order are:

a. Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy and qualify for the extensive services category, special care category, or clinically complex category if the rehabilitation therapy is not

provided. A resident who qualifies for the rehabilitation category is assigned a subcategory based on the resident's activities of daily living score.

b. Extensive services category.

(1) To qualify for the extensive services category, a resident must have an activities of daily living score of at least seven and have:

(a) Within the fourteen days preceding the assessment, received intravenous medication or tracheostomy care or required a ventilator, respirator, or suctioning; or

(b) Within the seven days preceding the assessment, received intravenous feeding; and

(2) A resident who qualifies for the extensive services category must have assigned a qualifier score of zero to five based on:

(a) The presence of a clinical criteria that qualifies the resident for the special care category, clinically complex category, or impaired cognition category; or

(b) Whether the resident is receiving intravenous medications or intravenous feeding.

c. Special care category.

(1) To qualify for the special care category, a resident must have one or more of the conditions for the extensive care category with an activities of daily living score of less than seven or have at least one of the following conditions or treatments with an activities of daily living score of at least seven:

(a) Multiple sclerosis, cerebral palsy, or quadriplegia with an activities of daily living score of at least ten;

(b) Respiratory therapy seven days a week;

(c) Treatment for pressure or stasis ulcers on two or more body sites;

(d) Surgical wound or open lesion with treatment;

(e) Tube feedings that comprise at least twenty-six percent of daily caloric requirements and at

least five hundred and one milliliters of fluid through the tube per day, and be aphasic;

(f) Radiation therapy; or

(g) A fever in combination with dehydration, pneumonia, vomiting, weight loss, or tube feeding.

(2) A resident who qualifies for the special care category is assigned a subcategory based on the resident's activities of daily living score.

d. Clinically complex category.

(1) To qualify for the clinically complex category, a resident must have one or more of the conditions for the special care category with an activities of daily living score of less than seven or have at least one of the following conditions, treatments, or circumstances:

(a) Comatose;

(b) Burns;

(c) Septicemia;

(d) Pneumonia;

(e) Internal bleeding;

(f) Dehydration;

(g) Dialysis;

(h) Hemiplegia with an activities of daily living score of at least ten;

(i) Chemotherapy;

(j) Tube feedings that comprise at least twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day;

(k) Transfusions;

(l) Foot wound with treatment;

(m) Diabetes mellitus, with injections seven days per week and two or more physician order changes in the fourteen days preceding the assessment;



living score and the resident's need for nursing rehabilitation services.

5- 7. Based-on-the-resident-classification-review Except as provided in subsection 2, each resident must be classified into a case-mix class with a the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:

a.--Heavy-rehabilitation-A;-case-mix-weight:--1.91-

b.--Heavy-rehabilitation-B;-case-mix-weight:--2.24-

c.--Special-care-A;-case-mix-weight:--2.45-

d.--Special-care-B;-case-mix-weight:--2.67-

e.--Clinically-complex-A;-case-mix-weight:--1.17-

f.--Clinically-complex-B;-case-mix-weight:--1.81-

g.--Clinically-complex-C;-case-mix-weight:--2.12-

h.--Clinically-complex-D;-case-mix-weight:--2.63-

i.--Special-behavior-A;-case-mix-weight:--1.16-

j.--Special-behavior-B;-case-mix-weight:--1.48-

k.--Special-behavior-C;-case-mix-weight:--1.90-

l.--Reduced-physical-functioning-A;-case-mix-weight:--1.00-

m.--Reduced-physical-functioning-B;-case-mix-weight:--1.29-

n.--Reduced-physical-functioning-C;-case-mix-weight:--1.48-

o.--Reduced-physical-functioning-D;-case-mix-weight:--1.72-

p.--Reduced-physical-functioning-E;-case-mix-weight:--2.21-

a. Rehabilitation with an activities of daily living score of seventeen or eighteen (group RAD); case-mix weight: 1.79.

b. Rehabilitation with an activities of daily living score between fourteen and sixteen, inclusive (group RAC); case-mix weight: 1.54.

c. Rehabilitation with an activities of daily living score between nine and thirteen, inclusive (group RAB); case-mix weight: 1.26.

- d. Rehabilitation with an activities of daily living score between four and eight, inclusive (group RAA); case-mix weight: 1.07.
- e. Extensive services with an activities of daily living score of at least seven and a qualifier score of four or five (group SE3); case-mix weight: 2.62.
- f. Extensive services with an activities of daily living score of at least seven and a qualifier score of two or three (group SE2); case-mix weight: 1.72.
- g. Extensive services with an activities of daily living score of at least seven and a qualifier score of zero or one (group SE1); case-mix weight: 1.56.
- h. Special care with an activities of daily living score of seventeen or eighteen (group SSC); case-mix weight: 1.50.
- i. Special care with an activities of daily living score of fifteen or sixteen (group SSB); case-mix weight: 1.39.
- j. Special care with an activities of daily living score between seven and fourteen, inclusive, or extensive services with an activities of daily living score of less than seven (group SSA); case-mix weight: 1.33.
- k. Clinically complex with depression and an activities of daily living score of seventeen or eighteen (group CC2); case-mix weight: 1.46.
- l. Clinically complex with an activities of daily living score of seventeen or eighteen (group CC1); case-mix weight: 1.27.
- m. Clinically complex with depression and an activities of daily living score between twelve and sixteen, inclusive (group CB2); case-mix weight: 1.18.
- n. Clinically complex with an activities of daily living score between twelve and sixteen, inclusive (group CB1); case-mix weight: 1.17.
- o. Clinically complex with depression and an activities of daily living score between four and eleven, inclusive (group CA2); case-mix weight: 1.08.
- p. Clinically complex with an activities of daily living score between four and eleven, inclusive, or special care with an activities of daily living score of less than seven (group CA1); case-mix weight: 1.02.

- q. Impaired cognition with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group IB2); case-mix weight: .98.
- r. Impaired cognition with an activities of daily living score between six and ten, inclusive (group IB1); case-mix weight: .88.
- s. Impaired cognition with nursing rehabilitation and an activities of daily living score of four or five (group IA2); case-mix weight: .80.
- t. Impaired cognition with an activities of daily living score of four or five (group IA1); case-mix weight: .67.
- u. Behavior only with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group BB2); case-mix weight: .97.
- v. Behavior only with an activities of daily living score between six and ten, inclusive (group BB1); case-mix weight: .85.
- w. Behavior only with nursing rehabilitation and an activities of daily living score of four or five (group BA2); case-mix weight: .69.
- x. Behavior only with an activities of daily living score of four or five (group BA1); case-mix weight: .63.
- y. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between sixteen and eighteen, inclusive (group PE2); case-mix weight: 1.04.
- z. Reduced physical functioning with an activities of daily living score between sixteen and eighteen, inclusive (group PE1); case-mix weight: .96.
- aa. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between eleven and fifteen, inclusive (group PD2); case-mix weight: .95.
- bb. Reduced physical functioning with an activities of daily living score between eleven and fifteen, inclusive (group PD1); case-mix weight: .87.
- cc. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of nine or ten (group PC2); case-mix weight: .86.

- dd. Reduced physical functioning with an activities of daily living score of nine or ten (group PC1); case-mix weight: .84.
- ee. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between six and eight, inclusive (group PB2); case-mix weight: .75.
- ff. Reduced physical functioning with an activities of daily living score between six and eight, inclusive (group PB1); case-mix weight: .68.
- gg. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of four or five (group PA2); case-mix weight: .66.
- hh. Reduced physical functioning with an activities of daily living score of four or five (group PA1); case-mix weight: .62.

6. 8. The classification is effective the date the review--is resident assessment must be completed in all cases except for the an admission review.--The-admission-review 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.

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

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

**75-02-06-18. Reviewer criteria.**

1. ~~--The-resident-classification-review-form-must-be-completed-by-a licensed-practical-nurse-or-registered-nurse-who-has-completed a---training---program---approved---by---the---department,---and---is certified-by-the-department.~~

2. ~~--If---a---facility---does---not---employ---a---sufficient---number---of registered-nurses-to-provide-the-required-number-of-reviewers, a---substitution---of-no-more-than-two-licensed-practical-nurses may-be-made.~~

3. The department may decertify any certified nurse for incompetency or neglect in completing resident classification review.
4. The maximum number of reviewers a facility may use during each review period is:
  - a. Facilities of one hundred beds or less two reviewers.
  - b. Facilities of more than one hundred beds two reviewers plus one additional reviewer for each fifty beds or part thereof by which the facility exceeds one hundred beds.
5. Information may not be used for the review unless it is documented, readily available to the review nurse, and properly includable in the resident's medical record or is in the resident's medical record.
6. The biannual review must be conducted during the second full week (Sunday through Saturday) of the month scheduled.
7. A reviewer must use the following qualifiers when completing the resident classification review:
  - a. Time period the time period to be used is the past seven days except when reviewing behaviors. The time period for behaviors is the last fourteen days.
  - b. Frequency number of times the questioned action occurs.
  - c. Documentation specific medical record documentation required must be in the resident's medical record, or readily available to the review nurse, and properly includable in the resident's medical record.

**History:** Effective September 1, 1987; amended effective June 1, 1988; January 1, 1990; November 1, 1992; November 22, 1993.  
**General Authority:** NDEC-50-24-1-04; -50-24-4-02  
**Law Implemented:** NDEC-50-24-4; -42-USE-1396a(a){13} Repealed effective January 1, 1999.

**75-02-06-21. Specialized rates for extraordinary medical care.**

1. A specialized rate for an individual with extraordinary medical needs may be established if the criteria in both subdivisions a and b are met.
  - a. (1) The individual requires specialized therapies that are:
    - (a) Restorative in nature (restorative means the individual has the ability to improve);

- (b) Medically necessary and provided in the facility;
  - (c) Of at least two different types; and
  - (d) Provided in excess of fifteen hours per week;
- (2) The individual requires extensive pulmonary care resulting from:
- (a) Suctioning and related tracheostomy care performed by a licensed nurse or therapist in excess of three and one-half hours in a twenty-four-hour period; or
  - (b) A drug-resistant respiratory infection;
- (3) The individual requires total parenteral nutrition (TPN) and:
- (a) The individual is not eligible for or has been denied medicare part A or B benefits; and
  - (b) The individual requires total parenteral nutrition based on medical necessity for a minimum of three months; or
- (4) The individual requires the use of a ventilator and:
- (a) Is dependent on the ventilator a minimum of six hours per day;
  - (b) Requires direct care by a licensed nurse, nurse aide, or therapist on a daily average of nine hours per day;
  - (c) Is physiologically stable; and
  - (d) Attempts to wean the individual from the ventilator have occurred during the acute hospital stay.
- b. Costs to provide direct care to the individual for the specialized services must exceed two and one-half one-quarter times the actual direct care rate, adjusted for inflation, prior to limitations, for the individual's resident classification, except the department may use a cost limitation of two one and three-quarters times the actual direct care rate, if specialized equipment is purchased for use by the resident. Costs that may be included in determining if the cost factor is exceeded include salaries and fringe benefits of all direct care

staff, nursing supplies, drugs, dietary supplements, and specialized equipment costs.

2. A specialized rate must be calculated for an individual who meets the criteria by subtracting the actual cost per day for direct care, prior to limitations, for the individual's classification from the total cost per day for the individual.
3. A one-time startup cost of one thousand dollars must be included in the initial specialized rate for the first thirty days after the effective date of the specialized rate.
4. Except as provided for in subsection 7, all income received for a specialized rate must be offset proportionately to the affected cost categories.
5. The facility shall report costs on a monthly basis for the first three full months after admission and on a quarterly basis thereafter. The specialized rates must be adjusted to actual on a prospective basis based on the report submissions.
6. The specialized rate must be paid in addition to the rate established for the individual's resident classification and may only be paid for in-house resident days.
7. If a specialized rate has been established and costs to provide direct care to the individual decrease to less than the cost limits provided for in subdivision b of subsection 1, the specialized rate must continue until the end of the rate year. Income from the specialized rate may not be offset to reported costs for the report year in which the costs to provide direct care to the individual decreased to less than the established cost limits.

**History:** Effective November 22, 1993; amended effective January 1, 1996; January 1, 1998; January 1, 1999.

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

**Law Implemented:** NDCC 50-24.4-19.2



**MARCH 1999**

**CHAPTER 75-03-15**

**AGENCY SYNOPSIS:** The department proposed rules amending North Dakota Administrative Code Chapter 75-03-15, Ratesetting for Providers of Services to Foster Children - Group Homes and Residential Child Care Facilities, and conducted a public hearing on those rules on April 22, 1998, and received written comment on those proposed rules until the end of the day on May 26, 1998.

75-03-15-01, Definitions: This section is amended primarily to add definitions of the terms "administration", "chain organization", "rate year", "report year", and "usable square footage".

75-03-15-02, Financial Reporting Requirements: This section is amended to refine accounting and reporting requirements and to identify penalties for false reports.

75-03-15-03, Client Census: This section is amended to specify the content of daily census records.

75-03-15-04, Ratesetting: This section is amended to require a new rate to be set each year and to delete information concerning requests for reconsideration and appeals, which language now appears in new section 75-03-15-16.

75-03-15-05, Cost Allocation: This section is amended to more specifically describe required allocation of costs.

75-03-15-06, Private Pay Rates: This section is amended to describe the refunding process when a facility elects to charge less than the established rate.

75-03-15-07, Allowable Costs for Maintenance and Administration: This section is amended to increase the per project amount that may be expensed as a part of the maintenance rate from \$1,000 to \$5,000 and also adds provisions for allocation of administrative costs.

75-03-15-08, Service Rate: This section is amended to correct grammatical errors.

75-03-15-09, Nonallowable Costs: This section is amended to include a provision allowing reasonable advertising costs for employee recruitment, correct grammatical errors, and identify, as nonallowable, costs related to facility operated schools or correspondence courses and costs unrelated to providing services to residents.

75-03-15-10, Revenue Offsets: This section is amended to refine language concerning offsets for food income, insurance recovery, and transportation income, and to add provisions concerning offsetting of vending income, gain on the sale of assets, rental income, grant income, other cost-related income, and other income from government sources.

75-03-15-11, Related Organization: This section is amended to remove language concerning chain organizations and home offices of chain organizations (which now appears in section 75-03-15-12) and to add a provision for leasing buildings and equipment from a related organization (which formerly appeared in section 75-03-15-12).

75-03-15-12, Home Office Costs: This section is amended to describe calculation of costs for home offices of chain organizations.

75-03-15-12.1, Startup Costs: This new section requires startup costs to be capitalized.

75-03-15-13, Taxes: This section is amended to refine language on taxes assessed against the facility and tax exemptions, and to require special assessments to be capitalized only if they exceed \$1,000.

75-03-15-13.1, Depreciation: This new section specifies proper treatment of depreciation as a cost.

75-03-15-14, Cost Allowability and Limitations: This section is amended to specify that this chapter applies only to not-for-profit organizations and group home and residential child care facility services.

75-03-15-15, Variance: This section is amended to specify that the authority to grant variances is discretionary.

75-03-15-16, Reconsideration and Appeals: This new section describes methods for reconsideration of rates and replaces provisions for appeals formerly a part of section 75-03-15-04.

#### **75-03-15-01. Definitions.**

1. "Accrual basis" means the recording of revenue in the period when it revenue is earned, regardless of when it revenue is collected, and the recording of expenses in the period when expenses are incurred regardless of when they expenses are paid.
2. "Administration" means the cost of activities performed by the facility staff in which the direct recipient of the activity is the organization itself. These include fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to services for which a rate is set.
3. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by ~~the department of human services regulations~~ this chapter.
4. "Chain organization" means a group of two or more program entities which are owned, leased, or, through any other device, controlled by one business entity.
- 3- 5. "Department" means the North Dakota department of human services.
- 4- 6. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
- 5- 7. "Interest" means the cost incurred with the use of borrowed funds.
8. "Rate year" means the twelve-month period beginning the seventh month after the end of a facility's fiscal year.
- 6- 9. "Reasonable cost" means the cost of {and the cost of providing} food, clothing, shelter, daily supervision, school supplies, and personal incidentals for children in care, staff liability insurance with respect to children in care, travel of the child to the child's home for visitation, and operation of the facility which must be incurred by an efficient and economically operated facility to provide services in conformity with applicable federal and state laws, regulations, rules, and quality and safety standards. Reasonable cost takes into account that the ~~provider~~ facility 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 service.
- 7- 10. "Related organization" means an organization which a ~~provider~~ facility 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 facility. Control exists where if an individual or

organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.

11. "Report year" means the facility's fiscal year.

12. "Usable square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described for that cost category.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

## **75-03-15-02. Financial reporting requirements.**

### **1. Records.**

- a. The ~~provider~~ facility shall maintain on the premises the required census records and financial information sufficient to provide ~~for~~ a proper audit or review. For any cost being claimed on the cost report, sufficient adequate data must be available and provided to the department in the form and manner requested by the department as of the audit date, to fully support the report item.
- b. ~~Where~~ If several programs are associated with a group and ~~their~~ the group's accounting and reports are centrally prepared, added information, for items known to be lacking support at the facility, must be submitted with the cost report or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. ~~Each provider~~ The facility shall maintain, for a period of not less than three years following the submission date of submission of the cost report to the department, financial and statistical records of the period covered by ~~such~~ the cost report, which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit shall ~~must~~ must be retained until final resolution. Each ~~provider~~ facility shall ~~make such~~ the records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

## **2. ---Accounting and reporting requirements---**

- a. The accounting system must be double-entry.
  - b. The basis of accounting for reporting purposes must be accrual.]
  - e. To properly facilitate auditing, the accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.
  - d. Generally accepted accounting principles will prevail unless alternative treatment is specified by the department.
  - e. The annual cost report, prescribed by the department, must be filed with the management services division, provider audit unit, within three months of the fiscal year end or the audited rate will be reduced by five percent for the following year. The penalty may be waived by the department upon a showing of good cause for the delay.
  - f. Costs reported must include all actual costs and adjustments for nonallowable costs. The audit unit will forward to the appropriate investigative unit all items identified as fraudulent or abusive claims for nonallowable costs.
3. Auditing. In order to properly validate the accuracy and reasonableness of cost information reported by the provider, the department will provide for audits as necessary. Persons conducting an audit on behalf of the department shall offer an exit interview at the conclusion of the site visit.

## 2. Accounting and reporting requirements.

- a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. However, if conflicts occur between ratesetting procedures and generally accepted accounting principles, ratesetting procedures must prevail. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.
- b. To properly facilitate auditing, the accounting system must be maintained in a manner that ensures cost accounts are grouped by cost category and are readily traceable to the cost account.
- c. The cost report must be submitted on or before the last day of the third month following the facility's report

year. The report must contain all costs of the facility, adjustments for nonallowable costs, and client days.

d. Upon request, the following information must be made available:

(1) A statement of ownership including the name, address, and proportion of ownership of each owner.

(2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility, or a certification that the content of any of these documents remain unchanged since the most recent statement given pursuant to this subsection.

(3) Supplemental information reconciling the costs on the financial statements with costs on the cost report.

(4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services that are claimed as allowable costs.

e. If the facility fails to file the cost report on or before the due date, or any extension granted by the department in writing, whichever is later, the department may impose a nonrefundable penalty of ten percent of any amount claimed for payment. The penalty may be imposed after the last day of the first month following the later of the due date or the end of any written extension and, once imposed, continues through the month in which the statement or report is received.

f. The facility shall make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report if the information filed is incomplete or inaccurate. In the event that a cost report is rejected, the department may impose the penalties described in subdivision e.

g. The department may grant an extension of the reporting deadline to a facility. To receive an extension, a facility shall submit a written request to the division of children and family services.

3. The department shall perform an audit of the latest available report year of each facility as necessary and shall retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performing audits and in establishing rates. Audits must meet generally accepted governmental auditing standards.

4. Penalties for false reports.

a. A false report is one wherein a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:

(1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;

(2) Terminate the department's agreement with the facility;

(3) Prosecute under applicable state or federal law; or

(4) Use any combination of the foregoing actions.

b. If a facility claims costs that have been previously adjusted as a nonallowable cost, the department may determine that the report is a false report. Previously adjusted costs that are the subject of a request for reconsideration or appeal must be identified as unallowable costs. The facility may indicate that the costs are not claimed, under protest, to perfect a claim if the request for reconsideration or appeal is successful.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

~~75-03-15-03. Resident Client census. A-daily-census-record-must be-maintained-by-the-facility--Any-day-for-which-the-facility--receives remuneration-for-an-available-bed-must-be-counted-as-a-resident-day.~~

1. A daily census record must be maintained by the facility. Any day for which services are provided or payment is ordinarily sought for an available bed must be counted as a client day. The day of admission or death must be counted. The day of discharge must be counted if payment is sought for that day.

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

a. Identification of the client;

b. Entries for all days. Entries cannot be made solely by exception;

c. Identification of type of day, i.e., shelter, outbased day, regular program; and

d. Monthly totals by resident and by type of day.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-04. Reimbursement Ratesetting.**

1. The method of determining the reimbursement rate per day will must be through the use of the prospective ratesetting system. The ratesetting system requires that the rate be established during the year six months following the facility's previous fiscal year and be effective ~~from the date the rate is set~~ until a subsequent rate is set based upon a subsequent first day of the seventh month following the end of the facility's fiscal year.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once the reasonable resident-related costs from the previous year are determined, adjustments are then applied to the historical cost to determine the prospective rate. Reasonable resident-related costs will must be determined with reference to instructions issued by the department.
3. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Rate adjustments to provide appropriate compensation may be requested where if major unforeseeable expenses are incurred. Such requests A request for rate adjustment may be made to the ~~director of the children and family services division who~~ department, which shall determine if the expense is resident related and beyond the control of those responsible for the management of the facilities. The following adjustment methods will must be used:
  - a. Salary and fringe benefits will must be adjusted using ~~historical costs and budgeted salaries for permanent employees as approved by the board or a designee of the board if such designated authority is noted in the facility's board minutes. All approved raises will be included from the effective date of the raise, but will be limited to the unadjusted annual percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, nonfood expenditure categories, the United States city average, as of the ending day of the fiscal year of the facility reflected in the cost report under consideration. Signed copies of the board or board designee approval of salaries must be submitted with the cost report.~~

- b. Property costs ~~will~~ must be included in the rate at the historical amount, unless adjusted in accordance with these rules.
- c. The other costs of the facility ~~will~~ must be projected, based upon the historical cost, plus the annual percent of increase, if any, in the "all items" index of the consumer price index, for the United States city average, as of the facility's fiscal yearend.

4. Limitations.

- a. The department may accumulate and analyze statistics on costs incurred by the facilities. These statistics may be used to establish ~~reasonable--ceiling--limitations~~ cost ceilings and incentives for efficiency and economy, based on a reasonable determination of the standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of the 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.
- b. ~~At--such--time--as~~ When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling ~~shall~~ must also be considered the maximum for payment under title IV-E payment of the Social Security Act, [42 U.S.C. section 670, et seq.].
- c. A facility is expected to maintain an average annual occupancy rate of seventy-five percent. The computed resident days ~~will~~ apply only to the following areas:
  - (1) Administrative costs;
  - (2) Plant operation costs; and
  - (3) Property costs.

A reserved paid bed ~~will-be~~ is counted as an occupied bed. A waiver of the minimum bed occupancy allowance may be made for new facilities or existing facilities at the discretion of the department.

- d. Administrative cost ~~shall~~ must be limited to fifteen the percent of total allowable costs exclusive of administrative costs, authorized by the department.

5. ~~Adjustments-and-appeal-procedures~~ Rate adjustments.

- a. Rate adjustments may be made to correct departmental errors subsequently determined.

b. An adjustment must be made for those facilities which have terminated participation in the program and have, disposed of its depreciable assets, or which have changed ownership.

c. Any requests for reconsideration of the rate should be filed with the children and family services division for administrative consideration within thirty days of the date of the rate notification.

d. An appeal may be initiated by indicating a desire for an appeal hearing to the appeals referee supervisor, department of human services, state capitol. The appeal will be governed by chapter 75-01-03.

**History:** Effective November 1, 1985; amended effective July 1, 1993; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-05. Cost allocation.** Where Direct costing of allowable costs must be used whenever possible. If services of a facility are jointly used for maintenance, service, administration, or nonallowable activities, the facility must shall allocate the cost by using a method which reflects the most reasonable cost based on the data available. Basic Allocation Allocation methods include: described in this section must be used.

1. Salaries must be allocated based on time studies or other reasonable methods. Salaries that cannot be reported based on direct costs are to be allocated using time studies. Time studies must be preapproved by the department and must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each assigned area of responsibility. Allocation percentages based on the time studies are to be used starting with the next pay period following completion of the time study or averaged for the report year. The methodology used by the facility may not be changed without approval by the department.
2. Housekeeping costs must be allocated based on usable square footage.
3. Property and plant costs must be allocated based on usable square footage.
4. Administration costs must be allocated on the basis of percentage of the total direct cost of the activity to the total costs other than, excluding administration.

5. Fringe benefits must be allocated based on the ratio of salaries to total salaries.
6. Dietary costs and food must be allocated based on meals served.
7. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for miles driven and the purpose of travel. If sufficient documentation is not available to determine to which cost category vehicle expenses are to be allocated, vehicle expenses must be assigned to administration.
8. Costs not direct costed, or allocable using methods identified in subsections 1 through 7, must be included as administration costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-06. Private pay rates.**

1. The department's foster care maintenance rate will and service rate, combined, must not exceed the usual and customary rate charged to private pay or other public pay residents. Amounts paid by the department in excess of the usual and customary private or other public pay rate must be reimbursed to the department.
2. If the established rate exceeds the rate charged to nondepartmental or private pay clients for a service, 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 from the department at the higher rate, the facility shall refund the overpayment within thirty days. The refund must be the difference between the established rate and the lowest rate charged to nondepartment or private pay clients times the number of department client days paid during the period in which the established rate exceeded the nondepartmental or private rate, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not refunded within thirty days. Interest charges on these refunds are not allowable costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-07. Maintenance-rate Allowable costs for maintenance and administration.**

1. Reimbursable--costs Maintenance rate. Costs includable in the rate for room and board include those described in this subsection, unless limited by section 75-03-15-09+.
  - 1- a. Salary and fringe benefits for direct care personnel, which must be limited to the-following:
    - a- (1) One---supervisor---of--houseparents The child care workers' supervisor-;
    - b- (2) Houseparents- Child care workers;
    - c- (3) Relief houseparents- child care workers;
    - d- Aides-
      - e- (4) Cooks-;
      - f- (5) Janitors and housekeepers-; and
      - g- (6) Laundry.
  - 2- b. Food. Actual food costs. The value of donated food may not be included in food costs.
  - 3- c. Operating supplies. The cost of supplies necessary to maintain the household for the residents. Costs include such--items--as cleaning supplies, paper products, and hardware supplies.
  - 4- d. Personal supplies and allowances. The cost of supplies used by an individual resident, including medicine chest supplies, personal hygiene items, sanitary needs, and of moneys given periodically to residents for personal use. Personal supplies and allowance does not include payment, whether in cash or in kind, for work performed by the resident or for bonuses or rewards paid based on behavior.
  - 5- e. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school. Costs---related---to---facility--operated--schools--or--to correspondence--courses--are--unallowable-
  - 6- f. Clothing. The cost of clothing to maintain a resident's wardrobe.
  - 7- g. Recreation. Costs incurred for providing recreation to the residents, including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.

- 8- h. Utilities. The cost of heat, lights, water, sewage, garbage, and common area cable TV.
- 9- i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. Mobile Vehicular phone costs ~~will not be~~ are not allowable.
- 10- j. Repairs. The cost of routine repairs and upkeep of property and equipment used for the residents. ~~Major repair costs in excess of one thousand dollars on equipment or buildings must be capitalized. If the repairs cannot be directly associated with the maintenance of a resident, a generally accepted method of allocation such as machine hours or square footage may be used. 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 or one-half of the original estimated useful life, whichever is greater.
- 11- k. Travel. All costs related to transporting residents, exclusive of evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the maximum mileage and per diem paid to state employees amount established by the internal revenue service.
- 12- l. Leases/rentals Leases and rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, an allocation must be made in accordance with section 75-03-15-05.
- 13- m. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not donated or purchased with funds made available through other government programs or grants is allowable. ~~Equipment and property having a cost in excess of one thousand dollars and a useful life of more than one year must be capitalized and depreciated. Depreciation will be calculated using the straight line method. Depreciation on property and equipment not used solely for the maintenance of residents must be allocated in accordance with section 75-03-15-05.~~
- 14- n. Insurance. ~~Cost~~ The cost of insuring property and equipment used in the maintenance of residents and liability insurance for direct care staff.
- 15- o. Medical. Costs for necessary medical-related items for residents which are not covered by insurance or

governmental medical care programs, provided that facility records demonstrate that reasonable attempts have been made to secure such insurance or program benefits. Costs may include resident physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment.

16. p. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.

2. Administration costs. Unless limited by section 75-03-15-09, administration costs are allocated in accordance with section 75-03-15-04, subsection 4 of section 75-03-15-05, and this subsection. Costs for administration include only those allowable costs for administering the overall activities of the facility identified as follows:

a. Compensation for administrators, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel;

b. Office supplies and forms;

c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit;

d. The cost of telephone service not specifically included in other cost categories;

e. Postage and freight;

f. Professional fees for legal, accounting, and data processing;

g. Central or home office costs;

h. Personnel recruitment costs;

i. Management consultants and fees;

j. Dues, license fees, and subscriptions;

k. Travel and training not specifically included in other costs categories;

l. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration;

- m. The cost of routine repairs and maintenance of property and equipment used to provide administration;
- n. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide administration;
- o. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration;
- p. Startup costs; or
- q. Any costs that cannot be specifically classified or assigned as a direct cost to other cost categories.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-08. Service rate.**

1. A service rate for the facility shall ~~shall~~ must be established based on census and allowable social service costs. Costs which may be included in the social service rate determination are:
  - a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing, and other professional social service staff;
  - b. Staff development for the professional social service staff; and
  - c. Travel and phone costs related to evaluations and social service activities.
2. The established rate shall ~~shall~~ must be the lesser of the actual costs of providing the social services in the facility or the monthly amount authorized by the department.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-09. Nonallowable costs.** Nonallowable costs include, ~~but are not limited to:~~

1. Administrative costs, overhead, and other expenses paid on behalf of employees who are not direct care personnel;

2. Advertising, except for reasonable advertising costs for employee recruitment, and public relations expenses-;
3. Any cost which has not actually been incurred by the facility, including the value of donated goods and services-;
4. Bad debt expense- expenses;
5. Costs incurred solely to enhance income from investments-;
6. Costs of securing contributions or donations-;
7. Costs related to income-producing activities, including, ~~but not limited to,~~ farms, rodeos, grass cutting services, or gaming, whether or not the activity is profitable-;
8. Depreciation costs for idle facilities except when such the facilities are necessary to meet caseload fluctuations-;
9. Dues and subscriptions for employees-;
10. Fines and penalties resulting from failure to comply with federal, state, and local laws-;
11. Interest expense on borrowed funds or finance and late charges-;
12. Recreational costs for activities, including staff only-;
13. Religious salaries, space, and supplies-;
14. Research and development costs-;
15. Taxes, including federal and state income taxes, special assessments which must be capitalized, taxes from which exemptions are available, self-employment taxes, and taxes on property not used in providing maintenance for the resident-;
16. ~~Telephone~~ Any telephone costs, including mobile phone, car phone, cellular phone, and beeper costs attributable to personal usage by residents and employees-;
17. Costs related to facility-operated schools or to correspondence courses; and
18. Any costs unrelated to providing services to residents.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

75-03-15-10. Offsetting--of-revenues Revenue offsets. Available revenues--from--third--parties;--exclusive--of--gifts;--donations;--or memorials;--will--be--used--to--offset--costs--prior--to--determining--a reimbursement--rate.--Costs--commonly--offset--by--revenues--include;--but--are not--limited--to: Facilities shall identify income to offset costs, where applicable, so that state financial participation does not supplant or duplicate other funding sources. Any income, whether in cash or in any other form which is received by the facility, with the exception of the established rate and income from payment made under the Job Training Partnership Act, must be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income must be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Treatment appropriate to some sources of income are provided in this section:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources ~~must~~ shall reduce costs by the amount of the reimbursement.
2. **Food income.** Facilities receiving ~~reimbursements~~ revenue for food and related costs from other programs, ~~such as~~ including the United States department of agriculture or the department of public instruction; ~~must~~ or amounts from or paid on behalf of employees, guests, or other nonclients for meals or snacks shall reduce allowable food costs by the revenue received. If the--agency--making--the--reimbursement--permits--an--administrative cost;--that--amount--will--not--be--offset--
3. **Insurance recoveries recovery.** Any amount received from insurance for a loss incurred ~~shall~~ must be offset against ~~costs--reported--in--the--current--year--to--the--extent--of--costs allowed--in--prior--or--current--year--for--such--loss~~ the appropriate cost category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.
4. **Refunds and rebates.** Any refund or rebate received for a reported cost must be offset against the appropriate cost.
5. **Transportation income.** ~~Any--reimbursement--of--transportation costs--included--in--the--facility's--cost--statement--must--be offset.~~ Any amount received for use of the facility's vehicles must be offset to transportation costs.
6. **Vending income.** Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to maintenance costs.
7. **Gain on the sale of assets.** Gain from the sale of an asset must be offset against depreciation expenses.

8. Rental income. Revenue received from outside sources for the use of facility buildings or equipment must be offset to property expenses.
9. Grant income. Grants, gifts, and awards from the federal, state, or local agencies must be offset to the costs which are allowed under the grant.
10. Other cost-related income. Miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset to the cost category where the item was expensed.
11. Other income from government sources. Other income to the facility from local, state, or federal units of government may be determined by the department to be an offset to costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-11. Related organization.**

1. Costs applicable to services, facilities, and supplies furnished to a provider facility by a related organization shall may not exceed the lower of the cost costs to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers-must The facility shall identify such related organizations and costs in, and allocations must be submitted with the cost report. An-appropriate--statement--of costs-and-allocations-must-be-submitted-with-the-cost-reports. For--cost--reporting--purposes,--management---fees---will---be considered-administrative-costs.
2. A--chain--organization--consists--of--a--group--of--two--or--more program-entities-which-are-owned,-leased,-or-through-any-other device,-controlled-by-one-business-entity.
3. Home--offices--of--chain--organizations--vary-greatly-in-size, number-of-locations,-staff,-mode-of-operations,-and--services furnished--to--their--member--facilities.---Although--the-home office-of-a-chain-is-normally-not-a-provider-in-itself,-it-may furnish--to-the-individual-provider,-central-administration-or other-services-such--as--centralized--accounting,-purchasing, personnel,-or--management--services.---Only-the-home-office's actual-cost-of-providing-such-services-is--includable--in--the provider's--allowable--costs--under-the-program.---Any-services provided-by-the-home-office-which-are--included--in--costs--as payments---to---an--outside--provider--will--be--considered--a duplication-of-costs-and-not-be-allowed. A facility may lease buildings or equipment from a related organization. In that

case, the rent or lease expense paid to the lessor is allowable in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to clients. The actual costs associated with the asset are limited to depreciation, interest, real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-12. Rental--expense-paid-to-a-related-organization Home office costs.**

1. A--provider--may--lease-a-facility-from-a-related-organization within-the-meaning-of-the--principles--of--reimbursement---In such--a--case,--the-rent-paid-to-the-lessor-by-the-provider-is not-allowable-as--a--cost,---The--cost--of--ownership--of--the facility-would,--however,--be-an-allowable-cost-to-the-provider. Generally,--these-would-be-costs--such--as--depreciation,--real estate--taxes,--and--other-expenses-attributable-to-the-leased facility.---The-effect-is-to-treat-the-facility--as--though--it were--owned-by-the-provider.---Therefore,--the-owner's-equity-in the-leased-assets-is-includable-in-the-equity-capital--of--the provider. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to member facilities. Although the home office of a chain is normally not a facility in itself, the home office may furnish to the individual facility central administration or other services, including centralized accounting, purchasing, personnel, or management services. Only the home office's actual costs of providing these services are includable in the facility's allowable costs under the program.
2. In--order--to-be-considered-an-allowable-cost,--the-home-office costs-must-be-directly-related-to-those-services-performed-for individual--providers--and--relate--to--client--services.---An appropriate-share-of-indirect-costs-will-also--be--considered. Documentation-as-to-the-time-spent,--the-services-provided,--the hourly-valuation-of-services,--and-the-allocation--method--used must--be--available--to-substantiate-the-reasonableness-of-the cost. Costs that are not allowed in the facility may not be allowed as home office costs that are allocated to the facility.
3. Any service provided by the home office which is included in costs as payments by the facility to an outside vendor or which duplicates costs for services provided by the facility is considered a duplication of costs and is not allowed.

4. If the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

75-03-15-12.1. Startup costs. In the first stages of operation, a new facility incurs certain costs in developing the ability to care for clients prior to admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to client care during that period because there are no clients receiving services. These costs are commonly referred to as startup costs. The startup costs are to be capitalized and must be recognized as allowable administration costs amortized over sixty consecutive months starting with the month in which the first client is admitted.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-13. Taxes.**

1. General:---Taxes--assessed-against-the-provider,-in-accordance-with-the-levying-enactments-of-the-several--states--and--lower-levels--of-government-and-for-which-the-provider-is-liable-for-payment;-are-allowable-costs:--Tax--expense--may--not--include-fines;-penalties;-or--those--taxes--listed--in-subsection-2. Taxes assessed against the facility in accordance with the levying enactments of several states and lower levels of government and for which the facility is liable for payment are allowable costs, except for those taxes identified as unallowable in section 75-03-20-09.
2. Taxes--not--allowable--as--costs:--The-following-taxes-are-not-allowable-as-costs:
  - 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--in--the--issuance--of-bonds;-property--transfers;-issuance--or--transfers--of-stocks;-etc:--Generally;-these-costs-are-either--amortized-over--the--life--of--the--securities-or-depreciated-over-the-life-of--the--asset:--They--are--not--recognized--as--tax-expense.

d. Taxes from which exemptions are available to the provider:

e. Special assessments on land which represent capital improvements, such as sewers, water, and pavements, should be capitalized and may be depreciated:

f. Taxes on property which is not used in the provision of covered services: Whenever exemptions to taxes are legally available, the facility shall take advantage of exemptions. If the facility does not take advantage of available exemptions, the expense incurred for taxes may not be recognized as an allowable cost under the program.

3. Special assessments in excess of one thousand dollars, which are paid in a lump sum, must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### 75-03-15-13.1. Depreciation.

1. General principles. Ratesetting principles require that payment for services must include depreciation on all depreciable type assets that are used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the facility, but are in use at the time the facility enters the program. The useful lives of these assets are considered to be ongoing and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report.

#### 2. Depreciation methods.

a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year, and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different from that

submitted on the cost report, a reconciliation must be prepared by the facility.

b. Facilities shall use a composite useful life of ten years for all equipment and land improvements and four years for vehicles. Buildings and improvements to buildings are to be depreciated over the length of the mortgage or a minimum of twenty-five years, whichever is greater.

### 3. Acquisitions.

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars for each item, the cost must be capitalized and depreciated over the estimated useful life of the asset, except as provided for in subsection 3 of section 75-03-15-13. Costs, including architectural, consulting and legal fees, and interest, incurred during the construction of an asset, 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 or one-half of the original estimated useful life, whichever is greater.

4. Recordkeeping. Proper records must provide accountability for the fixed assets and must also provide adequate means by which depreciation may be computed and established as an allowable client-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. For purposes of this chapter, donated assets may be recorded and depreciated based on their fair market value. If the facility's records do not contain the fair market value of the donated asset as of the date of the donation, an appraisal must be made. The appraisal must be made by a recognized appraisal expert and must be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets, thereby negating the need for a fair market value determination.

### 6. Basis for depreciation.

a. Determination of the cost basis of a facility and its depreciable assets, which have not been involved in any programs which are funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale. If the issue arises, 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.

(1) If the sale is bona fide, the cost basis must be the cost to the buyer.

(2) If the sale is not bona fide, the cost basis must be the seller's cost basis less accumulated depreciation.

b. The cost basis of a facility, including depreciable assets which are purchased as an ongoing operation, must be the seller's cost basis less accumulated depreciation.

c. The cost basis of a facility, including depreciable assets which have been used in any programs which are funded in whole or in part by the department, must be the cost basis used by the other program less accumulated depreciation.

d. Sale and leaseback transactions must be considered a related party transaction. The cost basis of a facility, including depreciable assets purchased and subsequently leased to a provider who operates the facility, must be the seller's cost basis less accumulated depreciation.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-14. Cost allowability and limitations.** Any questions regarding cost allowability and limitations ~~will--be~~ are governed by title IV-E of the Social Security Act [42 U.S.C. ~~Section~~ section 670, et seq.] and 45 CFR part 74, unless further limited by this chapter. The department sets rates under this chapter for not for profit organizations only and purchases group home and residential child care facility services for children in foster care only from facilities in North Dakota for which rates have been set under this chapter.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-15. Variance.** Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from the provisions of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of a ~~home~~ facility and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to a request for reconsideration or an appeal.

**History:** Effective November 1, 1985; amended effective March 1, 1999.  
**General Authority:** NDCC 50-06-16, 50-11-03  
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

75-03-15-16. Reconsiderations and appeals.

1. Reconsiderations.

a. A facility dissatisfied with the final rate established shall request a reconsideration of the final rate before a formal appeal may be made. Any requests for administrative reconsideration must be filed with the department within thirty days of the date of the rate notification.

b. The department shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. Appeals. A facility dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. This appeal must be filed as provided under chapter 75-01-03.

**History:** Effective March 1, 1999.  
**General Authority:** NDCC 50-06-16, 50-11-03  
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

## CHAPTER 75-03-16

**AGENCY SYNOPSIS:** The department proposed rules amending North Dakota Administrative Code Chapter 75-03-16, Licensing of Group Homes and Residential Child Care Facilities, and conducted a public hearing on those rules on April 22, 1998, and received written comment on those proposed rules until the end of the day on May 26, 1998.

75-03-16-01, Definitions: This section is amended to add a definition of "utilization review".

75-03-16-02, Effect of License: This section is amended to specify that a new license may be issued for a period not to exceed two years, to specify circumstances where the initial licensure is for one year, and specify the circumstances in which the Department may issue a license without inspecting the facility's buildings, grounds, and equipment.

75-03-16-02.1, Application for License: This new section describes the manner in which a facility must apply for a license and declares an application withdrawn if the applicant fails to submit all required documentation within sixty days of notification that the application is incomplete.

75-03-16-02.2, Provisional License: This new section authorizes the issuance of provisional licenses to facilities that do not comply with applicable standards.

75-03-16-02.3, Correction Orders: This new section specifies times within which a facility must correct specified types of deficiencies, and provides for an extension.

75-03-16-02.4, Fiscal Sanctions: This new section identifies fiscal sanctions for failing to comply with correction orders, or for specified types of violations of standards.

75-03-16-02.5, Denial or Revocation of Licensor Endorsement: This new section authorizes denial or revocation of a facility license or an endorsement to operate an outbased program, and specifies that a facility subject to a denial or revocation must wait 180 days before reapplying.

75-03-16-03, Organization and Administration: This section is amended to correct grammatical errors, to add requirements for written policies and descriptions of employee and nonemployee positions, and to require liability insurance.

75-03-16-04, Financial Records and Reports: This section is amended to require a facility to submit a projected budget along with an application for a change in licensed capacity.

75-03-16-05, Personnel Records: This section is amended to correct grammatical errors and to add a requirement for individual personnel records on criminal background checks and documentation of required licenses or qualification for the position or tasks assigned to the employee.

75-03-16-06, Facility Administrator: This section is amended to specify that facilities licensed for ten or more children must employ a full-time administrator, and that smaller facilities must employ an administrator at least half time.

75-03-16-07, Program Director: This section is amended to relax the qualifications for a program director and allow people with several professional backgrounds to so act.

75-03-16-08, Social Service Staff: This section is amended to correct some nonsubstantive errors and to relax social service staff requirements to permit persons other than social workers to engage in this work.

75-03-16-09, Social Service Staff Supervision: This section is amended to clarify the role of a social service staff supervisor and corrects nonsubstantive errors in the rule.

75-03-16-10, Child Care Staff: This section is amended to delete a requirement that child care staff provide annual verification of their ability secured from a qualified medical professional. This section also is amended to remove staffing requirements that now appear in section 75-03-16-13, Minimum Staff Requirements.

75-03-16-11, Volunteers, Student Field Placements, and Internships: This section is amended to require volunteers, student field placements, and interns, to provide incident reports to the same extent other employees must. This section is also amended to provide that these individuals may not be counted as staff for purposes of meeting staff-to-child ratios.

75-03-16-12, Personnel Policies: This section is amended to require that a facility's personnel policy specifically prohibit sexual contact between staff and children.

75-03-16-12.1, Criminal Conviction - Effect on Operation of Facility or Employment by Facility: This new section describes the effect of a criminal conviction on employment in the facility.

75-03-16-12.2, Employee Background Checks: This new section provides for employment offers to prospective employees be made conditional upon the employee's consent to and results of criminal background checks, child abuse or neglect background checks, and motor vehicular operators' background checks.

75-03-16-12.3, Staff Health Requirements: This new section describes how the staff health must be adequate and also describes requirements

that a facility have practices to avoid transmission of communicable diseases.

75-03-16-13, Minimum Staff Requirements: This section is amended to specify the numbers of program director staff, social service staff, and child care staff necessary to adequately staff a facility.

75-03-16-14, Staff Development: This section is amended to require specified minimum training for facility staff.

75-03-16-15, Child Abuse and Neglect: This section is amended to require a facility to have procedures to assure the report of suspected abuse or neglect.

75-03-16-16, Intake and Discharge Committee: This section is amended to describe the duties and functions of committees responsible for determining if a child is appropriate to enter or remain at the facility.

75-03-16-17, Case Plan: This section is amended to specify requirements for the development of a case plan and the individualized plan of care.

75-03-16-18, Interstate Compact on the Placement of Children: This section is amended to require that a facility admitting students from out of state have arrangements sufficient to assure a lawful return of the child after discharge.

75-03-16-19, Law Enforcement Notification: This section is amended to improve grammar.

75-03-16-20, Programs and Services: This section is amended to correct grammatical errors and make other nonsubstantive changes.

75-03-16-21, Case File: This section is amended to correct grammatical errors, make other nonsubstantive changes, and allow periodic file reviews to be done by a utilization review committee.

75-03-16-22, Religious Opportunities: This section is amended to correct grammatical errors.

75-03-16-23, Medical Care: This section is amended to require a comprehensive written plan to provide routine and emergency medical care, require first-aid supplies, and require effective controls of medications and serious communicable disease transmission.

75-03-16-24, Food and Nutrition: This section is amended to require compliance with Health Department standards for food handling.

75-03-16-25, Children's Needs: This section is amended to require a facility to assure that children's basic needs for hygiene and privacy are accommodated.

75-03-16-26, Discipline: This section is amended to require a facility to establish written policies concerning discipline and limit the types of discipline that may be applied.

75-03-16-26.1, Use of Isolation or Physical Restraint: This new section requires documentation of the use of isolation or physical restraint on a child.

75-03-16-26.2, Use of Mechanical Restraints - Limitations: This new section specifies that mechanical restraints may be used only to transport a child from the facility, and requires that mechanical restraints be used only by trained staff.

75-03-16-27, Confidentiality: This section is amended to limit the use of the children's identity or image for fundraising, publicity, or illustrative purposes and to specify requirements for maintaining information about children in a confidential manner.

75-03-16-28, Education: This section is amended to improve grammar.

75-03-16-28.1, Water Safety: This new section describes requirements for safe aquatic activity.

75-03-16-29, Buildings, Grounds, and Equipment: This section is amended to provide for heating system inspection, to require children to be advised of evacuation procedures, and to delete provisions that are now detailed in other new sections.

75-03-16-30, Variance: Amendments to this section clarify that granting a variance is discretionary.

75-03-16-46, Outbased Program Activities: This section is amended to conform to style guidelines.

75-03-16-61, Emergency and Safety Procedures - Communications: This section is amended to conform to style guidelines.

75-03-16-62, Transportation for Outbased Programs: This section is amended to conform to style guidelines.

75-03-16-64, Outbased Program Participant's Clothing and Personal Needs: This section is amended to conform to style guidelines.

**75-03-16-01. Definitions.** As used in this chapter:

1. "Department" means the North Dakota department of human services.
2. "Facility" means a residential child care facility or group home.
3. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical,

environmental educational, athletic, or other activities which:

- a. Involve physical and psychological challenges;
  - b. Are designed to:
    - (1) Stimulate competence and personal growth;
    - (2) Expand individual capabilities;
    - (3) Develop self-confidence and insight; or
    - (4) Improve interpersonal skills and relationships; and
  - c. Take place in a setting of twenty-four-hour participant supervision.
4. "Participant" means a child participating in an out-based program.
5. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under staff supervision.
6. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

**History:** Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

~~75-03-16-02. Effect of license. Upon a finding by the department of the applicant's compliance with the provisions of North Dakota Century Code chapter 50-11 and this chapter, the applicant must be issued a residential child care facility or group home license. The license is in force and effect for a period of one year, is nontransferable, and is valid only on such premises as are indicated on the license.~~

1. A facility license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only on the premises and for the number of children indicated on the license.
2. For a facility not licensed to provide foster care services on July 31, 1998, a licensed facility that changes its programming philosophy or ownership, or a provisionally licensed facility upon issuance of an unrestricted license:

- a. The initial period of licensure is one year;
  - b. The license may be renewed for a second one-year period if the facility successfully completes a program review and certifies compliance with all other licensing rules and requirements;
  - c. The license may be renewed for a third one-year period if the facility successfully completes a licensing study; and
  - d. Thereafter, the facility or home may be eligible for a two-year license.
3. The department may, in its sole discretion, issue a license without inspecting a facility's buildings, grounds, and equipment, if the department finds that:
- a. The facility was inspected and complied with the provisions of this chapter and of North Dakota Century Code chapter 50-11 regarding buildings, grounds, and equipment in the preceding year; and
  - b. The facility is otherwise eligible to receive a license.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-01, 50-11-02

75-03-16-02.1. Application for license.

1. An application for a facility license must be submitted to the department. Application must be made in the form and manner prescribed by the department. The department may require such information or documentation, or both, as it deems necessary or appropriate.
2. For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification of incompleteness.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-01, 50-11-02, 50-11-03

75-03-16-02.2. Provisional license.

1. A provisional license must:
  - a. Prominently state that the facility has failed to comply with applicable standards and regulations of the department;
  - b. State that the items of noncompliance are set forth on a document available upon request from the facility's operator or supervisor; and
  - c. Expire at a set date not to exceed one year from the date of issuance.
2. The department shall exchange a provisional license for an unrestricted license, which bears the exchange date, upon the facility's demonstration of compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license may be issued only to an applicant who has acknowledged, in writing, the factual and legal basis for the violation.
4. Any provisional license must be accompanied by a written statement of violation signed by the director of the division of children and family services, or the department's designee.
5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02.2

75-03-16-02.3. Correction orders.

1. The following time periods are allowed for correction of violations of North Dakota Century Code chapter 50-11 or this chapter:
  - a. For a violation that requires an inspection by a state fire marshal or local fire department authorized pursuant to section 75-03-16-40, five days;
  - b. For a violation that requires substantial remodeling, construction, or change to a building, sixty days; and
  - c. For all other violations, twenty days.
2. The department may require immediate correction of a violation that threatens the life or safety of a resident.

3. All time periods under this section commence on the third day after the department mails notice of the correction order to the facility.
4. Upon written request by the facility and upon showing need for an extension created by circumstances beyond the control of the facility and that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-02.4. Fiscal sanctions.

1. The department shall assess the following fiscal sanctions for each day that a facility remains out of compliance with a correction order after expiration of the time for correction of deficiencies:
  - a. For violations that endanger the health or safety of residents, a maximum of twenty-five dollars per day;
  - b. For violations of minimum staff requirements, a maximum of twenty-five dollars per day;
  - c. For violations of the prohibitions contained in section 75-03-16-26, a maximum of twenty-five dollars per day; and
  - d. For all other violations, a maximum of ten dollars per day.
2. The levy of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-02.5. Denial or revocation of license or endorsement.

1. A facility license or an endorsement to operate an out-based program may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11-02, 50-11-07, and 50-11-08.
2. A facility whose application for license or an endorsement has been denied or revoked may submit a new application no sooner than one hundred eighty days after the date of denial or

revocation. A facility is bound by the denial or revocation of a predecessor facility's application or endorsement, unless the facility shows substantial change in the facility's administration, statement of purpose, and program.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-03. Organization and administration.**

1. ~~All--facilities--must~~ Each facility shall have a governing body that is responsible for the operation, policies, activities, and practice of the facility. For purposes of this chapter:
  - a. ~~Where~~ If the facility is owned by a corporation, the board of directors of ~~that~~ the corporation ~~must-be--regarded--as~~ is the governing body.;
  - b. ~~Where~~ If the facility is owned by a partnership, the partners ~~must-be-regarded-as~~ are the governing body.;
  - c. ~~Where~~ If the facility is owned by a sole proprietor, the proprietor ~~must-be-regarded-as~~ is the governing body.;
  - d. If the facility is owned by a limited liability company, the board of governors is the governing body.
2. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or partnership any partner. The advisory committee ~~must~~ shall meet at least once a year.
- 2- 3. ~~All--facilities~~ Each facility shall provide the department with the names and addresses of the members of the governing body and any advisory committee within thirty days after the member's selection.
- 3- 4. The governing body shall:
  - a. Adopt a written statement of the purpose and philosophy of the facility.
  - b. Adopt written policies for the facility regarding personnel, nondiscrimination, admission and discharge, and discipline, program services, and smoking.
5. ~~A--copy--of--these~~ The facility shall submit copies of all required policies ~~must-be-submitted~~ to the department with the application for license and ~~must--be~~ shall maintain all

required policies on file at the facility or other designated location within the state of North Dakota.

6. All statements and policies required by this chapter must be in writing.
7. Each facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees must be capable of performing assigned duties.
8. Each facility shall carry general comprehensive liability insurance.
- e- 9. Meet Representatives of the facility shall meet on at least an annual basis with the appropriate personnel of the department to discuss the facility, its programs, and any other pertinent issues that ~~have-to-do-with-meeting~~ concern the needs of the children cared for in the facility.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-04. Financial records and reports.**

1. ~~Where~~ If a facility is owned by a corporation, the certificate of incorporation must be on file at the facility or other designated location within the state of North Dakota.
2. The facility shall maintain complete financial records regarding the facility. The financial books must be audited annually by a certified or licensed public accountant. A copy of the accountant's most recent annual report must be submitted with the license application ~~for--license~~. The annual audit report must be kept on file at the facility or other designated location within the state of North Dakota.
3. A facility shall submit a projected twelve-month budget ~~must be submitted to the department~~ based on predictable funds for the forthcoming year of operation. A new facility shall have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months. If a facility applies for a change in licensed capacity, it shall submit a projected budget reflecting the changed capacity.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-05. Personnel records.**

1. The facility shall maintain an individual personnel file on each employee. The personnel file must include, ~~but is not limited to, all the following~~:
  - 1- a. The application for employment; including a record of previous employment; and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
  - 2- b. Annual performance evaluations;
  - 3- c. First-aid training record;
  - 4- d. Cardiopulmonary resuscitation training record;
  - 5- e. Annual staff development and training record;
  - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, and child abuse or neglect record;
  - 6- g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
  - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
2. For purposes of subsection 1, "record" means documentation, including, with respect to development or training presentations, name of presenter, date of presentation, topic of presentation, and length of presentation.
3. The facility shall maintain an individual personnel file on each volunteer, student, or intern. The personnel file must include:
  - a. Personal identification information; and
  - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, and child abuse or neglect record.
4. The facility shall adopt a policy regarding the retention of personnel records.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-06. Facility administrator.** The governing body of the facility shall designate an administrator for the facility.

1. The responsibilities of the administrator must be clearly defined in writing by the governing body of the facility. If the facility is licensed for ten or more children, it shall employ a full-time administrator onsite or in close proximity. A facility may not employ an administrator less than half time.
2. The administrator shall have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
3. The administrator shall assure that the facility provides adequate supervision to all staff members who are working with residents.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-07. Program director.** The administrator shall hire or designate a program director for the facility.

1. The responsibilities of the program director must be clearly defined in writing by the administrator. The duties of the program director must be devoted to the provision of social services. If supervisory duties are assigned, the program director may only supervise personnel involved in treatment activities.
2. The program director ~~will--be--a--licensed,--certified--social worker--and--will--demonstrate--a--practice--knowledge--of--the casework--process.~~ must be:
  - a. A licensed, certified social worker (MSW) with at least one year of clinical experience;
  - b. A doctor of philosophy or master of science degreed psychologist with at least one year of clinical experience;
  - c. A licensed addiction counselor who has a bachelor of arts degree in a social or behavioral science with at least three years of clinical experience;
  - d. An individual possessing a master's degree in a clinical discipline, such as a behavioral science with a clinical focus, with at least two years of supervised clinical experience;

- e. An individual possessing a bachelor's degree in social work with at least three years' clinical experience in a licensed facility; or
- f. An individual otherwise qualified and serving as that facility's program director prior to August 1, 1998.

**History:** Effective July 1, 1987; amended effective March 1, 1999.  
**General Authority:** NDCC 50-11-03  
**Law Implemented:** NDCC 50-11-02

**75-03-16-08. Social service staff.** The administrator facility shall hire or designate social service staff ~~for the facility.~~

1. ~~All facilities~~ A facility shall have sufficient social service staff to meet minimum ~~child-to-staff~~ staff-to-child ratios required by this chapter.
2. The duties and responsibilities of the social service staff must be clearly defined in writing ~~by the administrator.~~
3. ~~Social service staff shall serve as a liaison between the facility and other community resources.~~
4. Social service staff responsible for the supervision of other employees, volunteers, or students on field placement or internship must be allowed sufficient time to perform such supervision tasks.
- 5- 4. ~~Social~~ Each social service staff person shall have, as a minimum, a bachelor's degree in social work or a related field and must be licensed ~~social workers~~ as required by that field of practice.
- 6- 5. Social service staff time must be devoted to the provision of social services.
- 7- 6. If the facility holds itself out as furnishing or using a specific treatment method, ~~there~~ the staff development and training records must ~~be documented proof~~ document that the staff has had appropriate training in the specific training method.
- 8- 7. Social service staff beginning employment in the facility will be on probation for a specified time to be determined by the ~~administrator~~ facility.
- 9- 8. Social service staff must have achieved the competencies necessary to implement any item of care or service which they are designated to perform in any child's individualized plan of care.

**History:** Effective July 1, 1987; amended effective March 1, 1999.  
**General Authority:** NDCC 50-11-03  
**Law Implemented:** NDCC 50-11-02

**75-03-16-09. Social service staff supervision.**

1. The program director shall provide, and shall document the provision of, a minimum of one hour of supervision per week for each staff member who is under the program director's supervision.
2. ~~No~~ Each full-time social service staff supervisor may supervise no more than six social service staff may--be assigned--to--each--full-time--supervisor holding positions as social service staff, treatment personnel, or child care supervisor. Social service staff supervisors may not supervise other positions.
3. ~~There--will--be~~ The facility shall establish and implement a written plan for inservice training for the program director calculated to maintain and improve competence in the supervisory role and in social service practice.

**History:** Effective July 1, 1987; amended effective March 1, 1999.  
**General Authority:** NDCC 50-11-03  
**Law Implemented:** NDCC 50-11-02

**75-03-16-10. Child care staff.**

1. A facility shall ~~employ-the-minimum-required-number-of~~ have on duty at all times sufficient child care staff to meet the minimum staff-to-child ratios required by this chapter.
- a: 2. The duties and responsibilities of the child care staff must be clearly defined in writing ~~by-the-administrator.~~
  - b: ~~The--facility--shall--have-on-duty-at-all-times-sufficient staff-to-meet-minimum-child-to-staff-ratios.~~
- e: 3. All child care staff must be twenty-one years of age or older.
  - d: ~~Child--care--staff--shall--have-annual-verification-from-a-qualified-medical--professional--that--they--are--able--to provide-for-children.~~
  - 2: ~~Persons-teaching-school-at-a-facility-shall-have-current-North Dakota-teaching-credentials.~~

**History:** Effective July 1, 1987; amended effective March 1, 1999.  
**General Authority:** NDCC 50-11-03  
**Law Implemented:** NDCC 50-11-02

**75-03-16-11. Volunteers and student field placements or, and internships.**

1. A facility which uses volunteers or, student field placements, or internships interns who work directly with children on a regular basis shall:
  - a. Develop a description of duties and specify specified responsibilities for volunteer and, student field placement, or internship positions to be provided to the volunteer and--to, the student, and his--or--her the student's school;
  - b. Designate a appropriate staff ~~member~~ members to supervise and evaluate volunteers and, student placement field placements, or internships interns; and
  - c. Develop a plan for the orientation and training of volunteers and, student field placements, or internships interns in the philosophy of the facility, the needs of the children in care, and the needs of their families.
2. ~~Provide--for--volunteers-and-student-placements-or-internships to-participate-in-developing--and--carrying--out--the--service plans--for-the-children-and-families-they-are-working-directly with-~~
3. Volunteers and, student field placements, or internships interns may provide services in support of, but not in substitution for, paid staff members. Volunteers, student field placements, and interns may not be counted as staff for purposes of staff-to-child ratio requirements imposed by this chapter.
4. ~~For--the-purpose-of-record-maintenance,-volunteers-and-student placements-or-interns-must-be-treated-as-employees-~~
3. Volunteers, student field placements, and interns shall create records of incidents that occur during their presence at the facility to the same extent that employees are required to create such records.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-12. Personnel policies.** ~~All-facilities~~ A facility shall have clearly written personnel policies. These ~~written~~ policies must be made available to each employee ~~in--writing~~ and must include,-at-a ~~minimum:~~

1. Staff A staff training and development plan;

2. Procedures for reporting suspected child abuse and neglect;
3. Procedures for staff evaluation, disciplinary actions, and terminations;
4. A prohibition of sexual contact between staff and children;
5. Procedures for employee grievances;
- 5- 6. Evaluation procedures which include a written evaluation following the probationary period for new staff and at least annually thereafter; and
- 6- 7. A plan for review of the personnel policies and practices with staff participation ~~no less than~~ at least once every three years, or ~~for revision when~~ more often as necessary.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-12.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 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 sections 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.

2. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.
3. For purposes of subdivision b of subsection 1, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
  - a. Common knowledge in the community;
  - b. Acknowledged by the individual; or
  - c. Reported to the facility as the result of an employee background check.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-12.2. Employee background checks.

1. A facility shall make an offer of employment to a prospective employee conditional upon the prospective employee's consent to and the results of background checks concerning:
  - a. Criminal conviction record; and
  - b. Child abuse or neglect record.
2. Where a position involves transporting children by motor vehicle the facility shall also make an offer of employment conditional upon the prospective employee's consent to and the results of a background report concerning the status of any motor vehicle operator's license issued to the prospective employee.
3. If a prospective employee has previously been employed by one or more facilities, the facility shall request a reference from all previous facility employers regarding the existence

of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

4. The department may perform a background check for reports of suspected child abuse or neglect each year on each facility employee.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-12.3. Staff health requirements.

1. All personnel, including volunteers and interns, shall be physically and mentally capable of performing assigned tasks.
2. Except as specified in subsection 3, the good physical health of each employee shall be verified by a health screening, including a test for tuberculosis, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment. The individual performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to residents of the facility or other staff members.
3. Unless effective measures are taken to prevent transmission, an employee suffering from a serious communicable disease must be isolated from other employees and residents of the facility who have not been infected.
4. The facility shall collect and maintain information obtained under this section regarding the medical condition or history of any employee on forms and in medical files which are separate from any other forms and files and treated as a confidential medical record available to the employee, the facility, and the department.
5. The facility shall develop a policy regarding health requirements for volunteers, interns, and student placements which addresses tuberculin testing.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-13. Minimum staff requirements.

1. During waking hours, each facility shall comply with the following minimum staff-to-child ratio requirements:

- a. --One--child-care-person;--one-social-service-person;--and-one administrator-for-a-facility-providing-services-to-one--to eight-children:
- b. --Two--child--care--staff;--one--social--service-person;--one program-director;--and-one--administrator--for--a--facility providing-services-to-nine-to-sixteen-children:
- c. --Three--child--care--staff;--two--social-service-staff;--one program-director;--and-one--administrator--for--a--facility providing-services-to-seventeen-to-twenty-four-children:
- d. --Four--child--care--staff;--two--social--service-staff;--one program-director;--and-one--administrator--for--a--facility providing--services-to-twenty-five-to-thirty-two-children:
- e. --Five--child--care--staff;--three-social-service-staff;--one program-director;--and-one--administrator--for--a--facility providing--services-to-thirty-three-to-forty-one-children:
- f. --Six--child--care--staff;--three--social-service-staff;--one program-director;--and-one--administrator--for--a--facility providing-services-to-forty-two-to-fifty-children:
- g. --Seven--child--care--staff;--four-social-service-staff;--one program-director;--and-one--administrator--for--a--facility providing-services-to-fifty-one-to-fifty-nine-children:

2. --During-sleeping-hours-there-must-be-staff-readily-available-to each-living-unit. For purposes of this section:

- a. "Reside" means to sleep and keep personal effects; and
- b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.

- 2. For purposes of this section, social service, program director, and administrator staff positions are expressed in full-time equivalents.
- 3. Every facility shall adopt a policy declaring the normal sleeping hours for the facility which shall not exceed eight hours per day.
- 4. Each facility shall comply with the following minimum staff-to-child ratio requirements for social service staff, program director, and administrator:

- a. One social service staff and a half-time administrator for a facility providing services for one to nine children; and
  - b. No less than one social service staff for each sixteen children, one program director, and one administrator for a facility providing services for ten or more children.
5. During waking hours each facility shall have:
- a. One child care staff on duty during times when one to nine children are present in the facility; and
  - b. No less than one child care staff on duty for each eight children during times when ten or more children are present in the facility.
6. During sleeping hours each facility shall have no less than one child care staff on duty for each sixteen children who are present in the facility.
7. During sleeping hours each facility structure in which a child resides must meet staff-to-child ratio requirements for child care staff.
8. A facility which operates more than one structure in which children reside shall count the children in all structures collectively for purposes of determining the number of children for which the facility provides services, the need to employ a program director, and the required number of social service staff.
9. Educational staff may not be counted as child care staff, social service staff, administrator, or program director during any time the educational staff provides educational services.
10. Subsections 4, 5, 6, and 8 are effective January 1, 2000, with respect to any facility licensed as of the effective date of this subsection provided that facility maintains staff-to-child ratios no less than those in effect on the effective date of this subsection. This subsection is ineffective after December 31, 1999.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-14. Staff development.**

1. Each facility shall ensure that the administrator, program director, social service staff, child care workers,

educational staff, and all other staff working directly with children shall receive at least twenty hours of training during each year of employment.

2. ~~This training may include, but is not limited to,~~ Training must prepare the staff to meet the needs of the children served and shall include the following subject areas:
  - a. ~~Administrative procedures and techniques.~~
  - b. ~~The establishment of goals and objectives.~~
  - e. Children's emotional needs and problems;
  - d. ~~Forming relationships and the impact of separation.~~
  - e. ~~Recognizing, preventing, and treating substance abuse.~~
  - f. b. The identification and reporting of child abuse and neglect;
  - g. ~~Program procedures and services.~~
  - h. c. Behavior management techniques, including crisis management, and techniques of nonviolent crisis intervention; and
  - i. ~~Techniques of passive physical restraint.~~
  - j. d. Emergency and safety procedures, including first aid and cardiopulmonary resuscitation.
3. ~~All training provided to employees should be current and applicable to each employee's job description or function. Training in nonviolent crisis intervention, first aid, and cardiopulmonary resuscitation must be given by a certified instructor.~~

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### 75-03-16-15. Child abuse and neglect.

1. ~~The administrators and staff of a facility shall abide by and make provision for all~~ All facility employees reading and understanding, volunteers, student placements, interns, and other nonemployees who have or may have regular contact with children shall certify having read the law requiring the reporting of suspected child abuse and neglect (, North Dakota Century Code chapter 50-25.1), and having read and received a

copy of the facility's written child abuse and neglect procedures.

2. Each facility shall ~~have--the--following~~ adopt written procedures requiring any employee to report cases of suspected child abuse ~~and~~ or neglect. The procedures must include the following statement:

All employers will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that any employee who knows or reasonably suspects that a child in residence whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation shall immediately report this information to the regional human service center in the region in which the facility is located.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee to the office of the state's attorney for investigation of possible criminal violation.

~~The--facility--shall--maintain--written--verification--that--each--staff--member--has--been--given--a--copy--of--this--written--procedure.~~

3. The facility's procedure must describe:
- a. To whom a report is made;
  - b. When a report must be made;
  - c. The contents of the report;
  - d. The responsibility of each individual in the reporting chain;
  - e. The status of an employee who is an alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;
  - f. The discipline of an employee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and
  - g. The status and discipline of an employee who fails to report suspected child abuse or neglect.
4. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child residing at the facility; ~~or of any licensing review.~~

The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation and permit confidential interviews with both staff and children.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-25.1-03

**75-03-16-16. Intake and discharge committee.**

1. ~~Intake~~ A facility shall adopt written intake, admission, and discharge policies ~~must--include~~ including age, sex, and characteristics of children ~~that--shall--be~~ eligible for admission.
2. A facility shall have an intake committee and a discharge committee. The committees may have the same members.
  - a. The intake and discharge committees may include the program director, a social service representative, a child care staff representative, and such additional members as the facility determines appropriate.
  - b. The program director or a social service staff representative shall chair each committee.
3. No child may be denied acceptance admission on the basis of race, color, creed, religion, or national origin.
- 3- 4. Intake procedures.
  - a. ~~The facility--shall--have-an-admissions~~ intake committee. This--committee shall screen applications and ~~have--the responsibility--of-deciding~~ decide which children shall-be ~~accepted-into~~ are admitted to the facility for care. These decisions must be made within thirty days of the receipt of sufficient information or a completed application.
  - b. In order to determine ~~the~~ if it is appropriate placement ~~of to admit~~ a child, the facility ~~will--require,--and--the referring--agency--will--be--responsible-to-provide-to-the facility,--at-a-minimum,--the-following--information--within thirty--days--after--making--the-referral~~ shall have a policy requiring:
    - (1) ~~See+at~~ The child's social and family history;:
    - (2) ~~Education~~ The child's educational records including a copy of the school district notification-, previous

and current individual education plans, if any, and the name of the responsible school district;

- (3) Psychiatric A psychiatric or psychological history, if indicated;
- (4) Medical A medical history, physical, and examination records;
- (5) Terms The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
- (6) Arrangements ~~for the child's necessary special education or training;~~
- (7) The name, address, and telephone number of the legal custodian or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardian; and
- (7) The legal custodian's or guardian's authorization to obtain necessary medical treatment.

c. A facility may admit a child without first securing all required information if:

- (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the facility's intake committee has determined that admission is appropriate; or
- (2) The child's circumstances require immediate placement and the facility's intake committee has preliminarily determined that admission is appropriate.

d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.

e. The referring agency is responsible for informing the facility, in writing, as to what shall request documentation of the services the parents or guardians custodian will be receiving and who is providing this service in their receive in the home community while the child is in placement receiving services in the facility.

d. f. The facility shall request quarterly progress reports from the agency providing services to the parents shall report

~~the progress, or lack thereof, to the facility and the referring agency on a quarterly basis~~ or custodian.

- e. ~~If the parents refuse to cooperate, this must be documented in writing by the referring agency or the agency providing the service and a written report submitted to the facility and referring agency.~~
- f. g. In any direct placement by a parent or guardian, the person individual making the placement is the referring agency.
4. h. ~~In the event that~~ If a child is not admitted, the facility must shall indicate why he or she was not accepted to the referring agency the reason the child was not admitted.
5. Prior to discharging a child, the facility and the referring agency ~~must be given time to~~ shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include; ~~but not be limited to;~~ the following:
- a. ~~Progress~~ A progress report concerning the resident-in care; child;
  - b. ~~Reason~~ The reason for discharge;
  - c. Future services recommended for the resident child and resident's the child's family; and
  - d. ~~Potential for replacement in~~ The potential need for the child to return to the facility.
6. ~~The admissions and discharge committees in the facility may include; but not be limited to; the following:~~
- a. ~~Program director;~~
  - b. ~~Social service representatives;~~
  - c. ~~Child care staff representatives;~~
  - d. ~~Educational staff where appropriate;~~
  - e. ~~The resident at the discretion of the facility;~~
7. ~~In the event of a discharge~~ The facility shall adopt a policy addressing the circumstances under which a child may be discharged on an emergency basis; the. If a child is discharged on an emergency basis, the facility shall immediately inform the child's parent, guardian, or legal custodian must be immediately informed.

8. ~~When an emergency placement is necessary, evidence that placement requirements were followed must be available within thirty days of the emergency placement.~~

History: Effective July 1, 1987; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

#### 75-03-16-17. Case plan.

1. ~~There must be~~ Social service staff shall develop a written, individualized plan of care ~~developed by social service staff~~ for each child within thirty days of admission to the facility. The case plan must demonstrate that the facility has made reasonable efforts to gather information from staff within the facility, parents, the referring agency, courts, schools, or any other appropriate ~~persons~~ individuals or agencies. The plan ~~developed~~ must be based on a thorough assessment of the situation and circumstances of the child, and ~~his or her~~ the family's needs, strengths, and weaknesses. If a plan was developed by another agency prior to admission, it must be reviewed to determine the relevancy to the current needs of the resident child and the child's family. The plan must delineate the ~~person~~ individual or entity responsible for providing any item of care or service required. The plan of care must be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service staff with changes and modifications made and documented in writing. The plan must state an estimated projected length of stay.
2. ~~When development of a written, individualized plan of care occurs, it is critical for the care of the child that all involved caretakers be invited, including the facility personnel and their consultants and the referring agency; the agency providing services; the family, if possible; the child, if possible; and others involved in the overall care of the child or its family system. It is critical that parental involvement be included in this phase.~~
3. The written, individualized plan of care must include a description of the services that will be provided for the parents in their family in the family's home community, plans for visitation by the child's parents ~~or guardians~~, legal custodian, or guardian to the facility or for the ~~child to visit outside the facility~~ child's home visits, an indication of who will provide primary case management and service, and the child's signature or the signed statement of a member of the facility's social service staff that the plan of care was explained to the child and the child refused to sign the plan of care.

- 4- 3. The written, individualized plan of care must include an indication of the services the parents child's family may receive from the facility or outside agencies.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-18. Interstate compact on the placement of children.**

1. All placements of children made from any state which is a member of the interstate compact on the placement of children or the interstate compact on juveniles must be made in compliance with the appropriate compact. It is the responsibility of the facility to ensure that, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact on juveniles have been completed.
2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles shall comply with all North Dakota laws and regulations prior to the arrival of a child into a facility.
3. Before admitting a child placed by any individual or entity that is not a court with jurisdiction in North Dakota, or an individual residing in North Dakota, a facility shall make arrangements with the placing authority sufficient to assure a lawful return of the child to the sending state without regard to the circumstance under which the child is discharged.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 14-13, 27-22

**75-03-16-19. Law enforcement notification.** Law A facility shall notify law enforcement officials ~~must be notified~~ immediately after it is confirmed that the resident child's whereabouts are unknown. The facility shall notify the child's parents, guardian, or legal custodian within twelve hours after the child's whereabouts become unknown. When the child is found, the facility shall report the child's return ~~must be reported~~ immediately to the law enforcement officials and the child's parents, guardian, or legal custodian.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-01

**Law Implemented:** NDCC 50-11-02

**75-03-16-20. Programs and services.**

1. The facility shall have adopt a written program plan ~~on file at the facility or other designated location~~ which must:
  1. a. ~~The program plan must include~~ Include a description of the facility's plan for the provision of services required in this chapter, as well as assessment and evaluation procedures to be used in program planning and delivery; and
  2. b. ~~The program plan must clearly~~ Clearly state which services are provided directly by the facility and ~~those which~~ which services ~~that~~ must be provided in cooperation with community resources such as public or private schools, and other appropriate agencies.
3. 2. The facility shall provide information to referral sources, upon written request, which must include, ~~but not be limited to:~~
  - a. Identification of what the facility provides to the resident; ;
  - b. ~~To whom they will provide services.~~ Characteristics of individuals appropriate for referral and admission to the facility;
  - c. ~~Who is appropriate for referral and admission to the facility.~~
  - d. ~~By what~~ The process by which the facility intends to achieve its goals; ;
  - e. d. Treatment orientation of the facility; and
  - f. e. Information required with the referral.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-21. Case file.** Within thirty days after placement, the facility shall establish and shall thereafter maintain a case file for each child receiving care in the facility. This file must include, ~~but not be limited to:~~

1. The child's full name, birthdate, and other identifying information; ;
2. ~~Signed placement~~ A signed care agreement, contract, or updated current court order establishing the facility's authority to accept and care for the child; ;

3. ~~Explanation~~ An explanation of custody and legal responsibility for consent to any medical or surgical care;;
4. ~~Explanation~~ An explanation of responsibility for payments for care and services;;
5. ~~Explanation-for~~ An explanation of ongoing services;;
6. Projected planning for discharge;;
7. ~~An--explanation-of-the-treatment-that-is-being-provided-to-the-parents-or-guardian-in-their-home-community;--This-information-should--be-provided-to-the-home-or-facility-by-the-appropriate-county-social-service-board;-regional-human-service-center;-or-any---other--agency--that--is--involved--with--the--family: A~~ permanency planning report or equivalent documents;
8. A copy of the appropriate interstate compact forms;;
9. A copy of the written individualized plan of care;;
10. Copies of periodic, but not less than quarterly, written reports to the child's parent, guardian, or legal custodian, developed by social service staff; and
11. Documentation that the program director or, administrator, or utilization review committee has reviewed each case file every thirty days.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-22. Religious opportunities.** The facility will make a reasonable effort to make opportunities available for the children to attend religious ceremonies within the area in which the facility is located, giving appropriate consideration to any requests by the child or and the child's parents; ~~within the community in which the facility is located.~~ The facility shall respect the religious beliefs of the child and the child's family.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-23. Medical care.**

1. The facility shall ~~make provisions and establish procedures for all~~ adopt a comprehensive written plan of preventive, routine, and emergency medical care including first aid,

dental care, and administration of prescription and nonprescription medicine.

2. A facility shall maintain first-aid supplies, including the red cross first-aid manual, in quantities and locations so that they are reasonably accessible at all times.
3. Any serious accident or illness requiring hospitalization or resulting in death must be reported to the parent, guardian, or legal custodian. Any ~~deaths~~ death must ~~immediately~~ be reported immediately to the department.
- 3: 4. A record must be kept of prescription and nonprescription medication received-by dispensed to each child, including the physician's medication order, the time, means, and frequency of administration, and the individual administering such medication.
- 4: 5. All prescription medicines and drugs must be labeled and stored in locked compartments except those requiring refrigeration which must be properly stored.
6. Facility staff shall retain possession of nonprescription medications.
7. All pet inoculations must comply with local and state requirements.
8. Unless effective measures are taken to prevent transmission, any child suffering from a serious communicable disease must be isolated from other children who have not been infected.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-24. ~~Nutritional-requirements~~ Food and nutrition.**

1. Food must be in wholesome condition, free from spoilage, filth, or contamination and shall be safe for human consumption. Food in damaged containers or with expired freshness dating is not considered safe for human consumption.
2. The facility shall ensure that the nutritional requirements of the children in care are met.
  - a: ~~Nutritionally~~ The facility shall serve nutritionally balanced meals ~~will-be-served~~ each day.
  - b: Special diets must be prepared for those children medically requiring them.

- 2- 3. All Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
- 3- 4. No home-canned foods may be served.
- 4- 5. Frozen homegrown food products,--such-as-garden-produce, may be served if maintained at-not-less-than-zero-degrees--Fahrenheit [-17.78---degrees---Celsius] in compliance with standards prescribed by the state department of health for food and beverage establishments.
6. Refrigeration for perishable food must be provided and maintained in accordance with standards prescribed by the state department of health for food and beverage establishments.
7. Personnel preparing food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-25. Resident Children's needs.**

1. ~~Arrangements--must--be--made~~ A facility shall arrange for children to have their--own a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear;--such-clothing-to-be and appropriate for the season.
2. Jobs and household responsibility for children must be assigned ~~so-that-they-do~~ in a manner that does not conflict with the educational schedule or physical health of the children or preclude the children's opportunity for socialization activities.
3. Participation in recreational and social activities must be on the basis of the individualized needs and goals of each child.
4. ~~All--children--must--be--advised~~ The facility shall advise all children, in writing, of the day-to-day rules of the facility. The facility shall adopt day-to-day rules which create the least restrictive environment, consistent with the needs of children in care.
5. Each child must be provided a bed with a clean mattress and clean bedding. Blankets must be available to each child as

temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly.

6. Each child must be provided personal hygiene and toilet articles, including washcloths and towels which must be changed when soiled, and no less often than weekly.
7. A facility shall ensure that privacy is assured when a family member visits a child. Any reason for restricting communications or visits between a child and the child's family members must be recorded in the child's case file.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-26. Discipline.** Discipline must be constructive or educational in nature. ~~It~~ Discipline may include diversion, separation from a problem situation, discussion with the child about the situation, praise for appropriate behavior, and gentle, physical restraint such as holding. A facility shall adopt and implement written policies for discipline and behavior management which include:

1. Only adult staff members of the facility shall may prescribe, administer, or supervise the discipline of children.
2. No child may be slapped, punched, spanked, shaken, pinched, roughly handled, or struck with an object by any staff of the facility, or otherwise receive any inappropriate physical treatment.
3. Authority to discipline may not be delegated to or be accomplished by other residents children.
4. A child may not be locked in any room or other enclosure.
5. Physical restraint or isolation may be used only:
  - a. As a necessary complement to positive programming designed to strengthen desirable and adaptive behavior; and
  - b. To prevent immediate harm to the child or to another individual.
6. Isolation, when used as discipline, must be brief and appropriate. The child must be within hearing of an adult in a safe, lighted, well-ventilated room. A child who is isolated from his peers for disciplinary reasons must be checked--on--at--reasonable-intervals observed by the staff at least every fifteen minutes. A-child-may-not-be-locked--in--a-room-under-the-guise-of-isolation:

5. 7. Verbal abuse or derogatory remarks about the child, the child's family, religion, or cultural background may not be used or permitted.
6. 8. Physical Neither physical restraints nor isolation may not be used for punishment, for the convenience of staff, or as a substitute for programming. Except as permitted under section 75-03-16-26.2, mechanical forms of physical restraints may not be used.
- ~~7. Physical restraint or isolation may only be used as a necessary complement to positive programming designed to strengthen desirable and adaptive behavior.~~
- ~~8. The facility shall have specific written policies when using isolation or physical restraint for disciplinary reasons, which must include a requirement that each use of isolation or physical restraint will be documented.~~
9. Cruel and unusual punishments are prohibited, including the following:
- a. Physically strenuous work or exercise, when used solely as a means of punishment; and
  - b. Forcing a child to maintain an uncomfortable position or to continuously repeat physical movements, when used solely as a means of punishment.
10. A child may not be deprived of any of the following as a means of discipline:
- a. A place to sleep with a pillow and bedclothes;
  - b. Meals;
  - c. Clean clothes;
  - d. Personal or telephone visits with parents, guardian, or legal representative;
  - e. Time necessary for personal hygiene;
  - f. Minimum exercise;
  - g. Receipt and sending of mail;
  - h. Access to toilet and water facilities, as needed;
  - i. Voluntary attendance at a religious service or religious counseling;
  - j. Clean and sanitary living conditions;

k. Medication; and

l. Sleep.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-26.1. Use of isolation or physical restraint. Each use of isolation or physical restraint must be documented, filed in the child's case file within twenty-four hours, and entered in the central record maintained by the facility within seventy-two hours. Documentation must include:

1. The date and time of use;
2. The number of times isolation or restraint was used and the duration of each use;
3. A complete description of the type of isolation or restraint used;
4. The names of staff who applied the restraint;
5. A complete description of the injuries sustained by children or staff involved and the medical treatment provided; and
6. Documentation that information concerning the incident was communicated to the child's parent, guardian, legal custodian, or placing agency.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-26.2. Use of mechanical restraints - Limitations. Notwithstanding the provisions of section 75-03-16-26, a facility may use permissible mechanical restraints to contain the behavior of a child in transit from the facility if the child has clearly indicated the intent to inflict serious physical injury upon that child or others and the facility is unable to get assistance from law enforcement.

1. Permissible mechanical restraints consist solely of handcuffs and foot cuffs which may be used only when a child is transported from the facility by vehicle.
2. The term "mechanical restraint" does not include seatbelts, shoulder harnesses, or wheelchair locks used in vehicular transportation.

3. The facility shall provide the department with a list of staff members trained to use mechanical restraints prior to the institution of a transportation mechanical restraint program. Training for use of mechanical restraint devices must be documented in the staff development and training record.
4. Placing entities shall be informed that the facility may use mechanical restraints as a behavior containment measure in transporting a child from the facility.
5. A facility shall report each incident of any use of mechanical restraints to the regional supervisor within three days. The report must include the affidavit of the individual applying the mechanical restraint that sets forth:
  - a. A statement that the use of mechanical restraints was a last resort measure and all less restrictive measures failed;
  - b. The less restrictive restraint measures tried as alternatives to mechanical restraints;
  - c. The name of the law enforcement unit called, the time that law enforcement was called and was unable to respond, and the time that the child was transported; and
  - d. The name of the staff member applying the mechanical restraints and a statement that the staff member using the mechanical restraints has been properly trained in the use of mechanical restraints.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-27. Confidentiality.**

1. ~~A facility may not make public any pictures or identifying material of a child or his family; or allow public appearances by children as representatives of a facility; without first securing the consent of the child and the written consent of the child's parents or legal custodian.~~
2. ~~A facility shall ensure that, when a family visits their child, they are assured privacy. Reasons for restrictions on communication or visitation rights must be recorded in writing in the child's case file.~~ For purposes of this section, "persons who have a definite interest in the well-being of children" include:

- a. The parents and legal guardian or custodian, if any, of a child, except to the extent the parental rights have been removed or limited by court order;
  - b. The individual or entity that placed a child in the facility; and
  - c. An individual or entity identified in a child's written individualized plan of care as a provider of services, in the home community of the child's family, for the reunification of the child and the child's family.
2. Except as otherwise provided in this section, facility records concerning children that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
- a. To staff of the facility, to the extent reasonably necessary for the performance of their duties;
  - b. To persons authorized by a parent, guardian, or custodian who may lawfully review a child's records, to review or receive copies of that child's records;
  - c. In a judicial proceeding;
  - d. To officers of the law or other legally constituted boards and agencies; or
  - e. To persons who have a definite interest in the well-being of the children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure the children's well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child or member of a child's immediate family, without first securing the child's written consent and the written consent of the child's parent, guardian, or legal custodian. The written consent must apply to an event that occurs no later than ninety days from the date that the consent was signed and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes. The duration of an event identified in such a consent document may not exceed fourteen days.

**History:** Effective July 1, 1987; amended effective March 1, 1999.  
**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-06-15, 50-11-02, 50-11-05

**75-03-16-28. Education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. All The facility shall ensure that all children who are residents of a receive care in the facility shall comply with all state school attendance laws.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

75-03-16-28.1. Water safety.

1. For purposes of this section, "aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, or water slides.
2. The facility shall determine the swimming ability of each child prior to the child engaging in an aquatic activity.
3. The facility may not permit any child to participate in an aquatic activity requiring higher skills than the child's swimming classification, except during formal instruction.
4. The facility may not permit children to engage in an aquatic activity without adult supervision at all times.
5. The facility shall adopt and enforce a method to account for each child's whereabouts during aquatic activities, such as a buddy system.
6. The facility shall provide and maintain lifesaving equipment during all aquatic activities. The facility shall maintain all lifesaving equipment in good repair and shall maintain documentation of equipment maintenance. All equipment must be immediately accessible in case of an emergency. At a minimum, the following equipment must be furnished:
  - a. A whistle or other audible signal device;
  - b. A first-aid kit;
  - c. A ring buoy, rescue tube, lifejacket, or other appropriate flotation device with a rope attached which is of sufficient length for the area in which it may be used; and
  - d. A reaching pole.

7. The facility shall require that all activity participants wear personal flotation devices during all boating activities, including water skiing, tubing, and rafting.
8. Prior to any travel in any watercraft, the facility shall provide instruction in boarding, debarking, self-rescue in capsize or swamping situations, and the use of personal flotation devices.
9. Water activities are prohibited in waters the facility knows or should know in the exercise of reasonable care to contain health-threatening levels of pollutants.
10. The requirements of this section apply to activities wherever the activities take place. Where activities take place off of the facility premises, the facility need not provide facility-owned lifesaving equipment, if equipment which meets the requirements of this section is provided by another entity.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-29. Buildings, grounds, and equipment.**

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department; or ~~if not available~~, the state fire marshal's office. A facility ~~is required to~~ shall correct any deficiencies found during these inspections. A The facility shall keep a written report of the annual inspection ~~must be kept~~ on file at the facility or other designated location, and a copy sent to the licensing authority.
3. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
4. There shall be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or

a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and identifying the ~~company---performing~~ individual who performed the service.

5. The facility shall provide the following smoke detectors:
  - a. One unit for each bedroom hallway;
  - b. One unit at the top of each interior stairway; and
  - c. One unit for each room with a furnace or other heat source.
- d- 6. Battery-operated smoke detectors must signal when the battery is exhausted or missing, and be tested at least once a month.
- 6- 7. A facility shall have written plans and procedures for meeting disasters and emergencies.
  - a. Staff members ~~are--required--to~~ must know all plans and procedures for meeting disasters and emergencies.
  - b. ~~All--children~~ The facility shall advise each child in the facility must-be-advised of all emergency and evacuation procedures upon their admission to the facility and these. These procedures shall be reviewed with the children every two months, including performance of fire evacuation drills.
  - c. The facility shall have telephones centrally located and readily available for staff use in each living unit of the facility. Emergency numbers ~~such-as~~ including the fire department, police, hospital, physician, and ambulance must be written and posted by each telephone. There must be telephone service in all buildings housing children.
  - d. There must be at least two independent exits from every floor. The exits must be located so that children can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area.
  - e. Flashlights must be available to all staff for emergency purposes.
- 7- ~~All--facilities--shall--carry--general--comprehensive--liability insurance.~~

8. Any vehicle used by a facility for the transportation of children or staff must be licensed in accordance with the laws of North Dakota and must be maintained and periodically inspected to ensure its safe operating condition.
  - a. Vehicles used to transport children shall ~~carry~~ must be covered by liability insurance.
  - b. The number of persons in a vehicle used to transport children may not exceed the number of available seats. ~~Seatbelts must be used when required by state law.~~ All individuals shall wear seatbelts in vehicles that are equipped with seatbelts.
  - c. Any operator of any vehicle shall hold a valid and ~~appropriate North Dakota~~ driver's license of the appropriate class from the operator's jurisdiction of residence.
9. ~~A facility shall have a written policy governing smoking by staff.~~
10. ~~A facility which has swimming facilities shall have written rules and procedures for water safety.~~
11. ~~A facility shall have a copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and shall have first-aid supplies.~~
12. ~~Any employee or resident of a facility suffering from a serious communicable disease must be isolated from other employees and residents of the facility who have not been infected and they must be excluded from working.~~
13. ~~Household pets must be inoculated against disease in accordance with local regulations and ordinances.~~
14. All buildings must be equipped with furnishings which are suitable to needs of the children. Recreational space and equipment must be safe, functional, and available for all children in the facility.
  - a. 10. The facility shall have one centrally located living room for the informal use of children.
  - b. 11. The facility shall have a dining room area large enough to accommodate the number of ~~persons~~ individuals who normally are served.
15. 12. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.

16- 13. A facility shall have bedroom accommodations for the children.

- a. ~~All children shall have their own beds with clean mattresses and clean bedding; Blankets must be available to each child when necessary; Sheets and bedding must be changed at least weekly and more often, if necessary.~~
- b. The facility shall have at least one bedroom for each four children.
- e- b. The facility may not permit nonambulatory children to sleep above or below the first ground floor.
- d- c. There must be no more than one child per bed. Triple bunks may not be used.
- e- d. No child six years of age or older may share a bedroom with a child of the opposite sex.
- f- e. All bedrooms must have at least one window which opens to the outside.
- g- f. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes.
- h- g. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms.
- i- h. Furnishings must be safe, attractive, easy to maintain, and selected for ~~their~~ suitability to the age and development of the children in care.
- j- i. A facility shall have sufficient storage to accommodate each child's clothing and other personal belongings.

17- 14. A facility shall have one complete bathroom for each six residents. A complete bathroom includes toilet, washbasin, and a tub or shower.

- a. All bathroom facilities must be indoors and, equipped with hot and cold running water, and ~~must be~~ kept clean.
- b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment.
- c. ~~Each child must be provided personal toilet articles, including washcloths and towels; These must be changed at least weekly and more often, if necessary.~~
- d- The facility shall provide bathrooms with nonslip surfaces in showers or tubs.

- 18- 15. Facilities shall ensure that kitchen facilities equipment and area meet the standards prescribed by the health state department of health for food and beverage establishments. Compliance with these standards must be documented annually and the documentation kept on file at the facility or other designated location within the state of North Dakota.
- a. Food storage space must be clean and containers must be covered and stored off the floor.
  - b. Dishes, cups, and drinking glasses used by the children must be free of chips, cracks, and other defects, and must be sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher.
  - c. ~~Personnel--preparing--food--shall--wash--their--hands--before--handling--food--and--take--precautions--to--keep--hair--out--of--food:~~
  - d. ~~Refrigeration--for--perishable--food--must--be--provided--and--must--be--maintained--at--forty--five--degrees--Fahrenheit--{7:22--degrees--Celsius}:~~
  - e. Kitchen floors must be reasonably impervious to water and be, slip-resistant, and maintained in a clean and dry condition.
- 19- 16. Laundry facilities must be located in an area separate from areas occupied by children. Space for sorting, drying, and ironing must be made available to children who are capable of handling their personal laundry.
- 20- 17. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, the facility shall obtain approval for the water supply from the health state department of health. Each water outlet accessible to children must be supplied with safe and potable water.
- 21- 18. All firearms and agricultural chemicals, pesticides, and other poisons must be stored in a locked cabinet. No--resident--may--be--permitted--to--possess--any--firearms--while--at--the--facility:
19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
- 22- 20. A facility shall have a ~~suitable~~, quiet area to be used for studying and furnished for that purpose.
- 23- 21. All rooms in a facility must have adequate lights, heat, and ventilation.

a: All baths and toilet rooms must have a window which opens to the outside or exhaust ventilation.

~~b: All windows and outside doors that will be opened must be screened in the summer. All screened doors must be self-closing.~~

~~c: The heating system of each facility must be inspected at least once per year by a qualified individual.~~

24: 22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.

a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards.

b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of the children.

c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight.

d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails.

e. Buildings must be free of ~~materials which contain~~ unabated asbestos.

f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.

25: 23. ~~Notice must be immediately given to~~ A facility must immediately notify the responsible placing agency and the department of a fire or other disaster which endangers or requires the removal of children for reasons of health and safety.

~~26: Flashlights must be available to all staff for emergency purposes.~~

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-30. Variance.** Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance from the provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any child cared for by the facility

and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to appeal.

**History:** Effective July 1, 1987; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-46. Out-based program activities.**

1. Activities must be led by staff who have demonstrated proficiency in the skills required for the activity, as determined by the facility's governing body and expressed in written policy and procedure.
2. Activities must be conducted in such a manner as to minimize any adverse effect on the environment.
3. Activities requiring or involving firearms are prohibited. No person individual may possess a firearm during any out-based program activity.
4. Airborne activities, including bungee jumping, hang gliding, and parachuting are prohibited.
5. A facility may not allow children or staff to participate in any test of new products by a manufacturer or other entity.
6. Activities must be graduated in the level of difficulty and matched to the level of skills or capabilities of the participants. The facility shall ensure that techniques and skills are taught progressively.
7. An activity's pace must be set according to the capabilities of the least able or fit member of the group, take into account previous illness or injury, and be designed to prevent the occurrence of accidents or illness.
8. A facility may not conduct any out-based program activity which has not been disclosed to the department in the facility's application for an endorsement.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-61. Emergency and safety procedures - Communications.**

1. The facility shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather,

loss of water or food supplies, intruders, and lost participants or staff. The plan must include:

- a. Designation of authority and staff assignments;
  - b. Plan for evacuation, including transportation and relocation of participants when necessary and evacuation of injured persons; and
  - c. Supervision of participants after evacuation or relocation.
2. All out-based programs shall provide firefighting equipment appropriate to the location and nature of program activities and shall maintain all such equipment in good repair. At a minimum, such equipment must include a shovel and water receptacle.
  3. The facility shall give all program participants training in fire prevention, fire safety, and precautions in case of severe weather. The facility shall give safety training in ~~the following~~ additional areas as may be applicable to program activities: including dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants or animals, snow blindness, and drowning.
  4. Any mobile program expedition group shall maintain the capability of contacting the facility at all times by means of a system that includes, at a minimum, reliable two-way radio or telephone communication devices plus a backup means of contact in the event of radio or telephone failure. An expedition group may substitute the capability of contacting a sheriff's office or other emergency response entity only upon prior approval by the department.
  5. A mobile program expedition group shall contact the facility by radio, telephone, or other verbal means at least once every forty-eight hours.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-62. Transportation for out-based programs.**

1. The facility shall adopt written policies for the transportation of participants in an out-based program.
2. Any vehicle ~~or vessel~~ used to transport out-based program participants or staff must be equipped with ~~the following~~ emergency accessories: flares, flashlight, jack, spare tire, and fire extinguisher. Vessels Any vessel used for water

transport of out-based program participants must be equipped with flares, flashlights, fire extinguishers, and personal flotation devices for all passengers.

3. When transporting one or more program participants, two staff members shall be present at all times, at least one of whom shall be of the same sex as the participant, except in case of emergency.
4. All passengers shall wear seatbelts in vehicles so equipped at all times while the vehicle is moving.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

**75-03-16-64. Out-based program participants' clothing and personal needs.**

1. Participants shall have their own clothing, which shall meet the participant's needs and be of proper size.
2. Clothing shall be suited to the existing climate and seasonal conditions. Participants shall have regular clean clothing changes at least twice weekly.
3. Each participant shall be provided adequate protective equipment to afford reasonable insulation from insects, effects of weather, and irritating plant life. Equipment must include ~~the following~~, as conditions require, rain gear, footwear, insect repellent, and sun screen. Staff shall ensure appropriate usage of protective equipment by participants.
4. Participants shall be allowed reasonable personal grooming items and supplies, including feminine hygiene supplies, which the participant may keep in the participant's personal possession.
5. Each participant shall have time during each day for the purpose of rest and reflection.
6. If program activities cause a participant to be absent from regular schooling more than fourteen days in a school year, the facility shall provide the means to continue the participant's individual education plan during the program.

**History:** Effective January 1, 1995; amended effective March 1, 1999.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

APRIL 1999

CHAPTER 75-01-03

**AGENCY SYNOPSIS:** North Dakota Administrative Code Section 75-01-03-08.2. Notice of Preadmission Screening and Annual Resident Review Determinations

75-01-03-08.2. Notice of Preadmission Screening and Annual Resident Review Determinations: Replaces the requirement for annual resident reviews of nursing facility residents with a requirement for review when a significant change may affect the level of services required by the resident.

**75-01-03-08.2. Notice of preadmission screening and annual resident review determinations.**

1. An individual dissatisfied with an adverse determination made with regard to the preadmission screening and annual resident review requirements of 42 U.S.C. 1396r(e)(7)(A) or (B) may request a fair hearing in review of that decision determination.
2. The right to request a fair hearing under subsection 1 arises upon receipt of a notice under subsection 3.
3. If the department's action in administering preadmission screening and annual resident review is adverse to an individual, the department shall provide to the individual a written notice which conforms to section 75-01-03-07 and which includes:

- a. A statement of the adverse determination;
  - b. The reason for the adverse determination;
  - c. The date of the adverse determination; and
  - d. A statement that 42 U.S.C. 1396r(e)(7) requires the department to make such determinations.
4. For purposes of this section and sections 75-01-03-07 and 75-01-03-09.2;--"adverse":
- a. "Adverse determination" means a determination made in accordance with 42 U.S.C. 1396r(b)(3)(F) or 42 U.S.C. 1396r(e)(7)(B), through the application of section 75-02-02-09, that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services, but does not mean a determination, made under 42 CFR 483.128, that an individual is not suspected of having mental illness or mental retardation; and
  - b. "Significant change" means:
    - (1) A significant physical status improvement experienced by a nursing facility resident, such that the resident is more likely to respond to special treatment for that condition or might be considered appropriate for a less restrictive alternative setting;
    - (2) The presence of a nursing facility resident's mental illness, mental retardation, or condition related to mental retardation, not identified prior to admission, when it later emerges or is discovered;
    - (3) Exhibition of increased symptoms of mental illness or behavioral problems by a nursing facility resident;  
or
    - (4) A circumstance arising if a review resulted in a determination requiring inpatient psychiatric treatment for a nursing facility resident, and an update to that determination is needed to support that individual's admission or readmission to a nursing facility following delivery of psychiatric services.
5. Preadmission screening and resident review, including determinations of significant change, is undertaken applying professional judgment and standards approved by the department that are consistent with the requirements of 42 CFR part 483, subpart C, and 42 U.S.C. 1396r(f)(8).

**History:** Effective February 1, 1995; amended effective April 1, 1999.  
**General Authority:** NDCC 28-32-02, 50-06-16  
**Law Implemented:** NDCC 50-06-05.1

## CHAPTER 75-03-21

### **AGENCY SYNOPSIS: North Dakota Administrative Code Chapter 75-03-21: Licensing of Family Foster Homes For Adults**

**75-03-21-01. Definitions.** Creates definitions of "qualified service provider" and "related by blood or marriage."

**75-03-21-03. License.** Provides that a license becomes invalid if the licenseholder is not a qualified service provider.

**75-03-21-08. Provider qualifications.** Requires the licensee to live continuously in the family foster care home for adults to be a qualified service provider, and to remove reference to the process for demonstrating competency.

**75-03-21-08.1. Verification and demonstration of competence.** Creates a new section to describe how a provider demonstrates competence.

**75-03-21-09. General practices.** Removes requirements concerning applicants who have been convicted of a criminal offense and concerning continuing education.

**75-03-21-09.1. Criminal conviction - Effect on licensure and operation of home.** Creates a new section to describe how a criminal conviction may affect licensure.

**75-03-21-21. Penalties.** Corrects cross-references.

#### **75-03-21-01. Definitions.**

1. "Abuse" means the willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation, or financial exploitation to or of a resident.
2. "Activities of daily living" means tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the home.
3. "Agency" means an organization which monitors family foster homes for adults.
4. "Applicant" means the person or persons completing and submitting to the department an application to be licensed to provide foster care for adults.
5. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of

personal, nonmedical services provided to assist a resident with activities of daily living.

6. "Caregiver" means a qualified individual who provides care to an adult living in a family foster home for adults.
7. "County agency" means the county social service board in the county where the family foster home for adults is located.
8. "Department" means the North Dakota department of human services.
9. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, or gratification.
10. "Home" means a family foster home for adults.
11. "License" means a document issued by the department authorizing an applicant to operate a family foster home for adults.
12. "Licensed capacity" means maximum number of residents for which the family foster home for adults is licensed.
13. "Licensing study" means an assessment of the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11.
14. "Mental anguish" means psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral changes or physical symptoms.
15. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to foster care for adults.
16. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.
17. "Provider" means the primary caregiver in active charge of a family foster home for adults who has documented qualifications in providing foster care for adults.
18. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.
19. "Resident" means any adult who is receiving foster care in a family foster home for adults for compensation on a twenty-four-hour basis, but does not mean any other person who lives or stays in the home.

- 19- 20. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, ~~12-1-20-03~~, ~~--12-1-20-04~~ 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
- 20- 21. "Substantial functional impairment" means a substantial inability, determined through observation, diagnosis, evaluation, or assessment, to live independently or provide self-care resulting from physical limitations.
- 21- 22. "Substantial mental impairment" means a substantial disorder of thought, mood perception, orientation, or memory which grossly impairs judgment, behavior, or the ability to live independently, or provide for self-care, and which is determined by observation, diagnosis, evaluation, or assessment.
- 22- 23. "Vulnerable adult" means an adult who has substantial mental or functional impairment.
- 23- 24. "Willfully" means willfully as defined in North Dakota Century Code section 12.1-02-02.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-03. License.**

1. Issuance of a license to operate a home indicates compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.
3. A license is valid only for the person or persons named and the premises described on the license.
4. A license is valid for no ~~more~~ longer than the lesser of twenty-four months from the date issued of issuance or the date of expiration of the provider's status as a qualified service provider.
5. A provider may obtain both a license to operate a family foster home for adults and a license as a family foster care home for children, but may not provide care to both adults and children simultaneously without prior written approval from the department.

6. If the home of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal social welfare agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the home was completed by the tribe's social welfare agency or tribal council.
  - b. That the prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
7. If the home of an active duty military family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base social welfare agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the home was completed by the military base's social welfare agency.
  - b. That the prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-08. Provider qualifications.** The provider shall:

1. Be twenty-one years of age or older;
2. Live continuously in the home in which family foster care for adults is provided;
3. Possess the physical health necessary to aid residents with activities of daily living;
4. Be literate and capable of understanding ~~and-following-written~~ ~~and--oral~~ instructions and communicating in the English language;
5. Be free of communicable diseases;

6. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol;
7. ~~Not--be-the-spouse-of-a-resident-receiving-care-in-the-home~~ Be a qualified service provider; and
8. Provide evidence of competence in:
  - a. The generally accepted procedure for infection control and proper handwashing methods;
  - b. The generally accepted procedure for handling and disposing of body fluids;
  - c. The generally accepted procedure for tub, shower, and bed bathing techniques;
  - d. The generally accepted procedure for hair care techniques, bed and sink shampoo, and shaving;
  - e. The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
  - f. The generally accepted procedure for caring for an incontinent resident;
  - g. The generally accepted procedure for feeding or assisting a resident with eating;
  - h. The generally accepted procedure for basic meal planning and preparation;
  - i. The generally accepted procedure for assisting a resident with the self-administration of medications;
  - j. ~~The--generally--accepted-procedure-for-changing-a-dressing-on-noninfected-sores;~~
  - k. The generally accepted procedures and techniques, which include dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
  - l. k. The generally accepted procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;
  - m. l. The generally accepted procedure for assisting a resident with bill paying and balancing a check book;
  - n. m. The generally accepted procedure for dressing and undressing a resident;

- e: n. The generally accepted procedure for assisting with toileting;
- p: o. The generally accepted procedure for routine eye care;
- q: p. The generally accepted procedure for proper care of nails and feet fingernails;
- r: q. The generally accepted procedure for caring for skin, including giving a back rub;
- s: r. The generally accepted procedure for turning and positioning a resident in bed;
- t: s. The generally accepted procedure for transfer using a belt, standard sit, bed to wheelchair;
- u: t. The generally accepted procedure for assisting a resident with ambulation; and
- v: u. The generally accepted procedure for making wrinkle-free beds.

9. A physician, registered nurse, occupational therapist, physical therapist, or other person with a professional degree in specialized areas of personal care shall verify, in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection 8. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.

10. Competence may be demonstrated in the following ways:

- a. A demonstration of the procedure being performed;
- b. A detailed verbal explanation of the procedure; or
- c. A detailed written explanation of the procedure.

11. An applicant for licensure under this chapter who possesses an adult foster care license on January 1, 1995, may be presumed competent to perform the procedures listed in subsection 8, and may not be required to provide verification as provided for in subsection 9, or demonstrate competency as provided for in subsection 10. The presumption may be rebutted by evidence that the applicant is incompetent in any of the procedures listed in subsection 8.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

75-03-21-08.1. Verification and demonstration of competence.

1. A physician, registered nurse, occupational therapist, physical therapist, or other person with a professional degree in specialized areas of personal care shall verify in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection 8 of section 75-03-21-08. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.
2. Competence may be demonstrated in the following ways:
  - a. A demonstration of the procedure being performed;
  - b. A detailed verbal explanation of the procedure; or
  - c. A detailed written explanation of the procedure.

**History:** Effective April 1, 1999.

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

**Law Implemented:** NDCC 50-11-03

**75-03-21-09. General practices.** The provider shall:

1. Permit a representative of the department, county agency, or other agency serving a resident entry into the home without prior notice;:
  2. Provide information about the residents to the department, county agency, or other agency serving a resident with reasonable promptness;:
  3. Report illness, hospitalization, or unusual behavior of a resident to the agency serving the resident, or to the resident's representative, whichever is appropriate;:
  4. ~~a.--Not--permit--a--person;--except--for--a--resident;--to--reside--in--the--home--or--act--as--a--caregiver--in--the--home;--if--that--person--has--been--convicted--of--an--offense;--unless:~~
    - ~~(1)--The--department--determines--the--person--has--been--sufficiently--rehabilitated;--and~~
    - ~~(2)--The--person--has--not--been--convicted--of--an--offense--which--has--a--direct--bearing--upon--the--health;--morality;--and--well--being--of--persons--cared--for--in--the--home--or--a--person's--ability--to--serve--the--public--as--a--caregiver--in--a--home.~~
- ~~b.--Deem--completion--of--probation--or--parole;--or--of--a--period--of--five--years--after--final--discharge--or--release--from--any--term~~

of--imprisonment,--without-subsequent-conviction,--as-prima  
facie-evidence-of-sufficient-rehabilitation.

e.---Consider--theft--crimes--involving--the-theft-of-entrusted  
property,--crimes-involving-any--assault,--and--any--crimes  
against--persons-where-the-victim-or-intended-victim-was-a  
minor,--infirm,--incompetent,--unconscious,--intoxicated--or  
under--the--influence-of-drugs,--or-a-ward-or-a-resident-of  
the-perpetrator's-living-quarters-are-deemed-as--having--a  
direct--bearing-on-the-health,--morality,--and-well-being-of  
persons-cared-for-in-the-home-or-on-a-person's-ability--to  
serve-the-public-as-a-caregiver-in-a-home.

5. Assure that information related to the resident shall be is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident.;
6. 5. Not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap.;
7. 6. Be willing to accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other agency representative serving a resident.;
8. 7. Assure that residents receiving care in the home are not subjected to abuse, sexual abuse, neglect, or exploitation.;
9. 8. Undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary.;
10. 9. Authorize the release of a report of any examination or evaluation, required under subsection 9 8, to the department or county agency.;
11. 10. Immediately report changes in the identity or number of persons living in the home to the department or county agency.;
12. 11. Immediately report an inability to carry out the parts of a care plan for which the provider is responsible to the monitoring agency and placing agency or person.;
13. 12. When requested by a supervising agency, aid the resident with activities of daily living.;

- 14- 13. Allow a representative of the department, or its designee, to enter the premises, examine the home and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter-;
- 15- 14. Cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized persons to the home and its residents-; and
- 16- 15. Not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner.
- 17- ~~Participate in at least one hour of continuing skill development for every two hundred hours of service or care provided; up to a maximum of ten hours per year.~~

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03, 50-11-04

75-03-21-09.1. Criminal conviction - Effect on licensure and operation of home.

- 1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the home or act as a caregiver in the home if the individual has been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 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 sections 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, in the case of a provider, or the provider, in the case of a substitute caregiver, determines that the individual has not been sufficiently rehabilitated.
2. A provider shall engage in practices that effectively implement this section.
3. For purposes of subdivision b of subsection 1, a provider shall treat completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in any capacity involving the provision of foster care to adults.

**History:** Effective April 1, 1999.  
**General Authority:** NDCC 50-11-03  
**Law Implemented:** NDCC 50-11

**75-03-21-21. Penalties.** A licensed operator, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day: subsections 1, 3, 4, 5, 7, and 9 of section 75-03-21-04; section 75-03-21-05; subsections 3, 4, 5, and 6 of section 75-03-21-06; subsection 8 9 of section 75-03-21-08; subsections 4, 5, ~~8,~~ and 16 7, and 15 of section 75-03-21-09; subsection 1 of section 75-03-21-10; subsections 3 and 4 of section 75-03-21-11; and subsection 1 of section 75-03-21-13.
2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day: subsections 6, 8, and 10 of section 75-03-21-04; subsections 5 and 6 of section 75-03-21-08; subsections 9, ~~10,~~ and 15 8, 9, and 14 of section 75-03-21-09; and section 75-03-21-12.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed operator to a fiscal sanction of five dollars per day.

**History:** Effective May 1, 1995; amended effective April 1, 1999.  
**General Authority:** NDCC 50-06-16, 50-11  
**Law Implemented:** NDCC 50-11-03



**TITLE 87**  
**Veterinary Medical Examiners, Board of**



**JANUARY 1999**

**ARTICLE 87-01.1**

**STAFF COMMENT:** Article 87-01.1 contains all new material and is not underscored so as to improve readability.

**ARTICLE 87-01.1**

**VETERINARIAN LICENSURE EXAMINATION**

Chapter  
87-01.1-01 Examination and Waiver

**CHAPTER 87-01.1-01  
EXAMINATION AND WAIVER**

Section	
87-01.1-01-01	Examination - Waiver
87-01.1-01-02	Examination Application Fee
87-01.1-01-03	Permit
87-01.1-01-04	Veterinarians From Foreign Institutions

**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, the national board examination, and the clinical competency test. The North

Dakota examination is a combination written jurisprudence examination and oral interview.

2. The board adopts the passing score on the examination recommended by the national board examination committee. Applicants must request that their examination scores be sent to the board.
3. The national board examination and clinical competency test are 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 if the student has taken and passed the national board examination and the clinical competency test and submits a letter from the dean of a veterinary college indicating the student's anticipated graduation date.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

**87-01.1-01-02. Examination application fee.** An applicant who takes the 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.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

**87-01.1-01-03. Permit.** An applicant who has taken and passed the national board examination and clinical competency test and has not for good cause taken the North Dakota test may obtain a permit to practice in North Dakota until the next examination is given. The fee for the permit is twenty-five dollars. A permit expires on the date the next examination is given.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

**87-01.1-01-04. Veterinarians from foreign institutions.**

1. For a graduate of a foreign veterinary college to qualify to write the North Dakota examination, the graduate must have a certificate issued by the educational commission for foreign veterinary graduates.
2. All credentials from foreign institutions must be translated into English over the signature and seal of the consul of the country in which such documents may have been issued and said consul must certify that said institution is recognized and approved by the authorities as a veterinary college in the country where it is located.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

## CHAPTER 87-02-01

**87-02-01-01. License renewal notice.** Prior to June first of each year, the executive secretary shall mail to each registered veterinarian the following notice:

Annual renewal of your license to practice veterinary medicine in North Dakota becomes due July 1, \_\_\_\_\_. The fee is ~~twenty~~ thirty-five dollars. You are reminded that if you are ~~delinquent one-year-in-payment; your license will become void without further action from the board~~ do not renew your license and practice veterinary medicine after the expiration of your license, you are in violation of North Dakota Century Code chapter 43-29. If your license lapses for two years, it may not be renewed but you may make application for a new license.

**History:** Amended effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-07 43-29-07.3

**87-02-01-02. Educational program attendance required.** Each licenseholder, except as otherwise provided, shall be required to receive ~~twelve~~ twenty-four hours of veterinary continuing education, approved by the board, in the ~~twelve~~ twenty-four months preceding each even-year renewal date. Veterinary continuing education is defined as an educational program which will enhance the licenseholder's professional ability to serve the public and which has the prior approval of the board.

**History:** Amended effective November 1, 1991; January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03, 43-29-07.3

**87-02-01-03. Educational program requirement waiver.** The board shall have the authority to waive the continuing ~~educational~~ education requirement for an individual, for any of the following reasons:

1. Impaired health.
2. For persons who have reached the age of sixty-five and are no longer actively engaged in practice.
3. For other good and sufficient reasons as presented and verified to the board at one of its regular meetings.

**History:** Amended effective November 1, 1991; January 1, 1999.

**General Authority:** NDCC 43-29-03, 43-29-07.3

**Law Implemented:** NDCC 43-29-03 43-29-07.3

**87-02-01-04.** ~~Annual-educational~~ Educational program requirements. Veterinary continuing education may consist of the following:

1. ~~Four~~ Eight hours of in-house training including ~~American~~ veterinary medical association tapes, films, computer-based programs, and ~~assessment---test---as---in---the---compendium~~ 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.
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.

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.

**General Authority:** NDCC 43-29-03, 43-29-07.3

**Law Implemented:** NDCC 43-29-03 43-29-07.3

**87-02-01-05.** **Notice of failure to comply.** If a licenseholder fails to receive the amount of continuing education necessary, a written notice must be sent and a six-month grace period will be allowed to make up the requirement. If, after ~~twelve~~ six months, the requirements have not been met, the license will be ~~void-without-further-action-on-the-part-of-the-board~~ revoked, suspended, or placed on probationary status.

**History:** Amended effective November 1, 1991; January 1, 1999.

**General Authority:** NDCC 43-29-03, 43-29-07.3

**Law Implemented:** NDCC 43-29-03 43-29-07.3

## CHAPTER 87-03-01

**87-03-01-01. Definition of a veterinary technician.** As used in this chapter, "veterinary technician" has the same meaning as "licensed veterinary technician" as defined in North Dakota Century Code section 43-29-09 43-29-01.1.

**History:** Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999.

**General Authority:** NDCC 43-29-09

**Law Implemented:** NDCC 43-29-07.1, 43-29-09

**87-03-01-02. Requirements for certification as a veterinary technician.** Certification as a veterinary technician requires a recommendation from a licensed veterinarian and a passing a certification-examination-consisting-of-written-and--practical--portions score on the national examination.

**History:** Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999.

**General Authority:** NDCC 43-29-09

**Law Implemented:** NDCC 43-29-09 43-29-07.1

**87-03-01-03. Prerequisites for taking the certification examination.** The minimum prerequisite for taking the examination for certification as a veterinary technician is graduation from a two-year veterinary technician training program.

**History:** Effective October 1, 1981; amended effective April 1, 1986; November 1, 1991.

**General Authority:** NDCC 43-29-09

**Law Implemented:** NDCC 43-29-09 43-29-07.1

**87-03-01-04. Application for certification - Fees - Certificate renewal.** Any person desiring certification as a veterinary technician shall make written application for certification to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota board of veterinary medical examiners a fee of twenty-five dollars plus the cost of the national examination. Fees are not returned, except by action of the board. If the certificate is granted, the technician shall pay an a ten dollar annual renewal registration fee as--determined--by--the-board,-based-on-the-financial-needs--of--the--board before December thirty-first. The renewal registration fee shall be paid by all certified technicians.

**History:** Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999.

**General Authority:** NDCC 43-29-09

**Law Implemented:** NDCC 43-29-09 43-29-07.1, 43-29-08.1

87-03-01-05. Educational program attendance required. Each veterinary technician, except as otherwise provided, shall receive eight hours of veterinary technician continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date. Veterinary technician continuing education is defined as an educational program that will enhance the licenseholder's professional ability to serve the public and which has the prior approval of the board. No more than two hours may be from in-house training.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-09

**Law Implemented:** NDCC 43-29-08.1

**STAFF COMMENT:** Article 87-04 contains all new material and is not underscored so as to improve readability.

## ARTICLE 87-04

### VETERINARY PRESCRIPTIVE PRACTICES

Chapter  
87-04-01 Prescriptions and Records  
87-04-02 Patient Records

#### CHAPTER 87-04-01 PRESCRIPTIONS AND RECORDS

Section  
87-04-01-01 Veterinary Prescription Drugs  
87-04-01-02 Prescription Drugs - Records - Labeling -  
Dispensing  
87-04-01-03 Basic Information of Records, Prescriptions,  
and Labels  
87-04-01-04 Storage of Prescription Drugs

**87-04-01-01. Veterinary prescription drugs.** Veterinary prescription drugs are to be used or prescribed only within the context of a valid veterinarian-client-patient relationship. Veterinary prescription drugs are those drugs restricted by federal law to use by or on the order of a licensed veterinarian.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03

**87-04-01-02. Prescription drugs - Records - Labeling - Dispensing.**

1. Adequate treatment records must be maintained by the veterinarian for at least two years, for all animals treated, to show that the drugs were supplied to clients with whom a valid veterinarian-client-patient relationship has existed. Such records must include the information set forth in section 87-04-01-03.
2. All veterinary prescription drugs must be properly labeled when dispensed. A complete label must include the information set forth in section 87-04-01-03. If that information is included in a manufacturer's drug label, it is unnecessary to

repeat it in the veterinarian's label. If there is inadequate space on the label for complete instructions, the veterinarian must provide additional information to accompany the drug dispensed or prescribed. The veterinarian's additional instructions must be kept in the owner's drug storage area.

3. When veterinary prescription drugs are dispensed to companion animal owners, such drugs must be placed in child-resistant containers.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03

**87-04-01-03. Basic information of records, prescriptions, and labels.**

1. Records of prescription drugs must contain the:
  - a. Name, address, and telephone number of veterinarian.
  - b. Name, address, and telephone number of client.
  - c. Identification of animals or herds treated.
  - d. Date of treatment, prescribing, or dispensing of drug.
  - e. Name and quantity of the drug to be prescribed or dispensed.
  - f. Dosage and duration directions for use.
  - g. Number of refills authorized.
  - h. Cautionary statements, as needed.
2. Prescriptions must contain the:
  - a. Name, address, and telephone number of veterinarian.
  - b. Name, address, and telephone number of client.
  - c. Identification of animals or herds treated.
  - d. Date of treatment, prescribing, or dispensing of drug.
  - e. Name and quantity of the drug to be prescribed or dispensed.
  - f. Dosage and duration directions for use.
  - g. Number of refills authorized.

- h. Cautionary statements, as needed.
  - i. Signature or equivalent.
3. Prescription labels must contain the:
- a. Name, address, and telephone number of veterinarian.
  - b. Name of client.
  - c. Identification of animals or herds treated.
  - d. Date of treatment, prescribing, or dispensing of drug.
  - e. Name and quantity of the drug to be prescribed or dispensed.
  - f. Dosage and duration directions for use.
  - g. Cautionary statements, as needed.
  - h. Expiration date.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03

**87-04-01-04. Storage of prescription drugs.** Veterinary prescription drugs must be stored separately from over-the-counter drugs. Drugs must be stored under conditions recommended by the manufacturer.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03

**STAFF COMMENT:** Chapter 87-04-02 contains all new material and is not underscored so as to improve readability.

**CHAPTER 87-04-02  
PATIENT RECORDS**

Section

87-04-02-01

Companion Animal Records

87-04-02-02

Food Animal and Nontraditional Livestock Records

**87-04-02-01. Companion animal records.** Patient records must contain the following information in legible form:

1. Client name, address, and phone numbers.
2. Patient name, breed, description, sex, and age.
3. Results of any patient physical examinations, diagnostic and treatment plans, and results of diagnostic and treatment procedures.
4. Any medications used, including route of administration and dosage.
5. Evidence of the client's consent for all surgical procedures. Although it is preferred that a signed consent form be obtained from each client, such is not required as long as the records reflect oral consent was received.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03

**87-04-02-02. Food animal and nontraditional livestock records.** Patient records must contain the following information in legible form:

1. Client name, address, and phone numbers.
2. Identification of animals or herds treated.
3. Any medications used, including route of administration and dosage.

4. Evidence of client's consent for all surgical procedures. Although it is preferred that a signed consent form be obtained from each client, such is not required as long as the records reflect oral consent was received.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-03

**STAFF COMMENT:** Article 87-05 contains all new material and is not underscored so as to improve readability.

## ARTICLE 87-05

### VETERINARIAN DISCIPLINARY PROCEEDINGS

Chapter  
87-05-01           Complaints and Peer Review

#### CHAPTER 87-05-01 COMPLAINTS AND PEER REVIEW

Section  
87-05-01-01           Complaint  
87-05-01-02           Peer Review Committee

**87-05-01-01. Complaint.** A person may file a written complaint with the board setting forth the specific charges upon which the complaint is made. Upon receiving a complaint, the board shall notify the veterinarian of the complaint and request the veterinarian provide a written response to the complaint within twenty days of receipt of the board's letter. The veterinarian's response will be made available to the complainant.

After receiving the response, the board will review the complaint and response and determine whether, on its face, the complaint warrants further action by the board. If the board determines the complaint does not warrant further action, the complaint is dismissed and the complainant and the veterinarian will be notified in writing of the board action. If the board determines the complaint warrants additional investigation, the board will determine whether the complaint should be referred to a peer review committee for investigation or whether the investigation should be conducted by other means. If the board determines sufficient information exists to warrant initiating formal disciplinary action, a formal complaint will be filed pursuant to North Dakota Century Code chapter 28-32.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-15

#### **87-05-01-02. Peer Review Committee.**

1. The board, after reviewing the complaint and response to the complaint, may appoint a peer review committee for the purpose

of investigating the complaint and rendering a recommendation to the board. The board may seek input from the North Dakota veterinary medical association on potential members of the peer review committee.

2. The peer review committee must be appointed by the board and consist of three licensed veterinarians. Board members may not serve as peer review committee members. If, after reviewing the complaint and response, the committee believes additional expertise is needed to render a recommendation, the board may appoint an additional member to the peer review committee who has the training, experience, and expertise necessary to assist in making a recommendation.
3. At the time the peer review committee members are appointed and prior to the review process, the board shall notify the complainant and respondent as to the identity of the members of the peer review committee. The complainant and respondent may submit a documented request that the board excuse a committee member for due cause. The board may excuse the committee member and appoint another committee member to replace the excused member.
4. The peer review committee shall investigate the complaint to determine whether a reasonable basis exists to believe the respondent violated the laws or rules regulating the practice of veterinary medicine. The peer review committee is an agent of the board and has the same investigatory powers that the board has. The board's legal counsel may provide advice and assistance to the peer review committee.
5. After completing its investigation, the peer review committee shall make a recommendation to the board. The peer review committee shall recommend whether a reasonable basis exists to believe the respondent violated any laws or rules regulating the practice of veterinary medicine and whether disciplinary action should be commenced. If the committee recommends disciplinary action be commenced, the committee shall identify the factual basis of the recommendation and the law or regulation allegedly violated. A copy of the peer review committee's recommendation must be provided to the complainant and respondent.
6. After receiving the peer review committee's recommendation, the board shall review the recommendation and determine whether to dismiss the complaint, conduct additional investigation, or initiate formal disciplinary action.

**History:** Effective January 1, 1999.

**General Authority:** NDCC 43-29-15

**Law Implemented:** NDCC 43-29-15

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



FEBRUARY 1999

CHAPTER 89-07-02

**89-07-02-06.** License Field presence required. Every person intending to conduct operations in this state shall designate to the board, on forms furnished by the board, at least one natural person who shall at all times be physically present during all operations for which a permit is required and who will be ~~in control of such operations~~ the contractor's immediate point of contact in the field. The individual so designated will be fully appraised of the status of the contractor's project equipment and personnel at all times, and will coordinate the contractor's field activities.

**History:** Effective November 1, 1988; amended effective February 1, 1999.

**General Authority:** NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

**Law Implemented:** NDCC 61-04.1-11, 61-04.1-14

**89-07-02-07. Criteria for issuance of license.** The competence of any applicant to engage in weather modification operations must be demonstrated to the board pursuant to North Dakota Century Code section 61-04.1-14 upon the showing that the any natural person or persons designated by the applicant pursuant to section 89-07-02-06, who will be in the full-time employment solely of the applicant during the project period, and who will oversee the applicant's actions during the project has or have:

1. A minimum of one year of field experience in the management and control of weather modification operations or research; and
2. One of the following requirements:

- a. Four additional years' experience in weather modification operations or research;
- b. A degree in mathematics, engineering, or the physical sciences, plus two years' additional experience in weather modification operations or research; or
- c. A degree in meteorology; or a degree in engineering, mathematics, or the physical sciences which includes at least twenty-five semester hours of coursework in meteorology.

At least one such person designated by the applicant and licensed by the board at all times and days during which the project is ongoing shall be available for immediate consultation by the board, at a location made known to the board by the contractor.

In determining competency, the board may also consider any other items to be set forth in a license application pursuant to section 89-07-02-08.

**History:** Effective November 1, 1988; amended effective February 1, 1999.

**General Authority:** NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

**Law Implemented:** NDCC 61-04.1-14

**TITLE 92**  
**Workers Compensation Bureau**



FEBRUARY 1999

CHAPTER 92-01-02

92-01-02-21. Employee leasing service arrangements.

1. Definitions. As used in this section:

- a. "Client employer" means an entity leasing that obtains one or more temporary employees from a--labor an employment services contractor.
- b. "Employee leasing service arrangement" means an arrangement in which a client employer uses the services of a--labor an employment services contractor to maintain obtain all or some of its employees. Employee--leasing arrangement--does--not--include--an-arrangement-to-provide temporary-employees.
- c. "Labor Employment services contractor" means an entity leasing-one-or-more-of-its-employees in the business of employing temporary employees for the purpose of providing the services of the temporary employees to another-company more than one client employer.
- d. "Temporary employee" means an employee individual who is provided-by-a--labor placed by an employment services contractor to with a client less-than-three-fourths-of-any three-consecutive--months employer through an employee service arrangement.

2. Coverage.----For---purposes--of--coverage--under--the--Workers Compensation-Act,-a-client-leasing-an-employee--from--a--labor contractor--pursuant--to-an-employee-leasing-agreement-must-be

deemed the employer of the leased employee, and the bureau may require the client to provide workers' compensation coverage for the leased employee. The labor contractor shall provide workers' compensation coverage for temporary employees provided to clients.

3. Premium for leased employees --- Client as policyholder Responsibility for payment of premium.

- a. The client shall provide a complete payroll record of the employees leased to it from the labor contractor. Premium on that payroll must be based on the classifications and rates which would be applied if the employees leased to apply to the work performed by the temporary employee for the client were direct employees of the client employer.
- b. If the client does not supply the payroll records of the employees leased to it from the labor contractor, one hundred percent of the employee leasing arrangement price must be established as the payroll of the employees leased to the client. The premium must be charged on that amount as payroll. Pursuant to North Dakota Century Code section 65-04-04, both a client employer and an employment services contractor must contribute premiums for workers' compensation coverage for their respective shares of the risk associated with the work-related activities of temporary employees. An employment services contractor shall comply with the North Dakota Workers Compensation Act and maintain an active account for workers' compensation coverage of its staff employees and for its share of the workers' compensation coverage for the temporary employees it provides to client employers. Moneys paid to the bureau by an employment services contractor for premiums attributed to employment of temporary employees constitute a contribution of premiums to the fund by that employment services contractor. A client employer shall contribute premiums for its share of the risk associated with each temporary employee obtained from an employment services contractor as part of an employee service arrangement. Every client employer shall either remit premiums for that risk directly to the bureau or enter into an agreement through which the employment services contractor collects those premiums on behalf of the bureau through its charges to the client employer and remits those premiums to the bureau on behalf of the client employer. Remuneration paid by a client employer, pursuant to such an agreement, for premiums attributed to a temporary employee obtained as part of an employee service arrangement constitutes a contribution of premiums to the fund by that client employer.
- c. If an experience modification has been established for the client, that The bureau shall apply the experience

modification must--be--applied of the employment services contractor to the premium--developed--for--the---leased employees premiums attributed to an employee service arrangement unless the bureau determines the entity is not an employment services contractor as defined by this rule.

**History:** Effective July 1, 1991; amended effective January 1, 1992; April 1, 1997; February 1, 1999.

**General Authority:** NDCC 65-02-08, 65-04-17

**Law Implemented:** NDCC 65-04-17



**TITLE 95**  
**Agricultural Products Utilization Commission**



NOVEMBER 1998

**STAFF COMMENT:** Article 95-05 contains all new material and is not underscored so as to improve readability.

**ARTICLE 95-05**

**AGRICULTURAL PROTOTYPE DEVELOPMENT PROGRAM**

Chapter  
95-05-01      Agricultural Prototype Development Grant

**CHAPTER 95-05-01**

**AGRICULTURAL PROTOTYPE DEVELOPMENT GRANT**

Section	Purpose
95-05-01-01	Purpose
95-05-01-02	Definition of Prototype
95-05-01-03	Projects Eligible for Funding
95-05-01-04	Application Process
95-05-01-05	Application Form
95-05-01-06	Review Process
95-05-01-07	Evaluation Criteria
95-05-01-08	Supplemental Program Information

**95-05-01-01. Purpose.** Agricultural prototype development grants may be used by existing businesses, startup businesses, and individual and academic or business partnerships to develop agricultural prototypes that have the potential to be commercialized and developed in North Dakota.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-02. Definition of prototype.** The prototypes for which funding may be acquired include:

1. Food processing equipment.
2. Agricultural equipment.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-03. Projects eligible for funding.** Projects must be for applied research rather than basic research.

1. The processes for prototype development which are eligible for funding include:
  - a. Product design.
  - b. Manufacturing the prototype.
  - c. Prototype testing, including test marketing.
  - d. Patenting.
  - e. Prototype evaluation or redesign or determination of the need to develop a different prototype.
  - f. Market assessment to refine the prototype.
2. Allowable costs for the project do not include capital investments, operating costs, or inventory costs. Allowable costs for the project are limited to:
  - a. Consulting and technical assistance costs.
  - b. Research and development of prototype.
  - c. Pre-approved outside consulting fees.
  - d. University technical assistance.
  - e. Matching small business innovation research grants, energy related invention program grants, and other federal, state, or local funding sources.
  - f. Other pre-approved research and development costs.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-04. Application process.** Applications will be considered on a quarterly basis with the following application deadlines: March first, June first, September first, and December first.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-05. Application form.** Applications should be limited to twenty typed, single-spaced or double-spaced eight and one-half by eleven inch pages, including the application form and any supplementary attachments. In addition to the application form, applicants are required to include the following in their proposals:

1. An executive summary, limited to two pages, summarizing the essential elements of the proposal, funding request, and purpose of intended use of funds;
2. A project narrative, including:
  - a. Description of the product or technology that will result from the research;
  - b. Description of the planned commercialization efforts, including market research to date by the applicant or others and potential market for the product or technology to be developed;
  - c. Description of the research methodology to be employed, including objectives, tasks, milestones, and the research site. Proposals must include a schedule of planned activities and a timeframe for completion;
  - d. Summary of prior research done by the applicant or others and the development of the product or technology to date;
  - e. Explanation of how the product or technology will benefit the applicant or end user of the product;
  - f. Explanation of why this particular project is needed and how the project will further develop existing technologies;
  - g. Explanation of patents or regulatory approval granted or expected to be granted as a result of successful outcome of research;

- h. Explanation of the estimated benefit of the project to the agricultural sector of North Dakota's economy;
  - i. Explanation of the estimated benefit of the project in terms of job and wealth creation for North Dakota;
  - j. A list of the project cosponsors, including the name of the organization, address, telephone number, key contact, and nature of participation, and attached letters of intent to participate; and
  - k. A list of principal investigators and other members of the research team, including their respective expertise and responsibilities under the project. Attached resumes must be limited to two pages each.
3. A list and explanation of other funding sources on a form provided by the agricultural products utilization commission;
4. A detailed project budget including the following categories:
- a. Salaries and fringe benefits.
  - b. Equipment and supplies.
  - c. Travel.
  - d. Printing.
  - e. Computer lease or rental.
  - f. Consultant fees.
  - g. Other direct costs.
5. A breakdown of planned expenditures by funding source including:
- a. Agricultural products utilization commission funds.
  - b. Other state funds.
  - c. Private funds.
  - d. Federal funds.
  - e. Other matching funds, identified by individual source.
- A breakdown must indicate whether funds have payback stipulations.
6. Letters of commitment for matching funds to be provided contingent upon approval of an application.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-06. Review process.** Proposals are subject to the following review process:

1. Upon receipt, the proposals are prescreened for eligibility based on the applicant's stated intent, compliance with these guidelines, the proposed budget, and uses of funds.
2. Independent peer reviewers may be used to evaluate the technical merits of the project.
3. The applicant may be required to make a presentation to a review committee.
4. The commission will meet to allow applicants an opportunity to present their proposal and answer commission members' questions. Presentation question and answer periods will be limited to thirty minutes. The meetings will be held approximately one month following the completion of the peer review.
5. The board members shall make funding decisions.

**History:** Effective November 1, 1998.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-07. Evaluation criteria.** Criteria for evaluating proposals are as follows:

1. The concept is new technology or a new application of existing technology with a reasonable assurance that the concept will work;
2. Significant market research has been conducted by the applicant or others, and there is a reasonable assurance of a potential market;
3. The applicant has demonstrated the ability to manage the business of fully commercializing the idea;
4. There is favorable community support for the project;
5. There are favorable recommendations from local economic development specialists, university-based technical specialists, or other qualified service providers;

6. There are favorable collateral contacts to determine the applicant's qualifications and background;
7. The applicant demonstrates a personal commitment and a commercialization development plan; and
8. There is an adequate and realistic budget projection for complete prototype development.

**History:** Effective November 1, 1998.

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

**Law Implemented:** NDCC 4-14.1-03.1

**95-05-01-08. Supplemental program information.**

1. Funding is typically limited to a maximum of twenty-five thousand dollars per project. Funding must be matched dollar for dollar, and some of the match dollars must be provided by the applicant or local entities, or both.
2. Once a proposal is approved, the executive director of the agricultural products utilization commission, with direction from the commission members, will negotiate terms for an agreement, which must specify expected results of the funding and the timeline for completion of the project. Progress of each project must be monitored.
3. If the project is commercialized in a state other than North Dakota, royalty payments must be collected from the grantee. The royalty payments must be calculated based on a percentage of gross sales and must commence at the time of commercialization.
4. Proposals by out-of-state firms may be considered if the sponsoring company establishes a firm commitment to develop a North Dakota operation upon receipt of the funding.

**History:** Effective November 1, 1998.

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

**Law Implemented:** NDCC 4-14.1-03.1

**TITLE 104**

**Examiners for Hearing Instrument Dispensers,  
North Dakota Board of**



APRIL 1999

CHAPTER 104-02-01

104-02-01-01. Definitions.

1. "Adequate and proper audiometric testing" as used in North Dakota Century Code section 44-33-12 includes, except as provided in this subsection, a minimum of air conduction, bone conduction pure tone thresholds, and speech audiometry with appropriate masking. When indicated, these measures should be supplemented with sound field measures, real ear evaluations, or other board-approved methods of verification of improvement in hearing or discrimination. The minimum tests described in this subsection are subject to appropriate modification or omission depending upon the age and ability of the person being tested to respond to the tests.
2. "Direct supervision" as used in subsection 2 of North Dakota Century Code section 43-33-08 means to coordinate, direct, and inspect at first hand the accomplishments of. Direct supervision requires direct onsite supervision in the same facility or location.
3. "Hearing instrument" refers to new hearing instruments and includes the serial number provided at the time of delivery, the length of warranty on the hearing instrument, and whether the warranty is backed by the dealer or manufacturer. The term "hearing instrument" also refers to stock hearing instrument, custom shells, earmolds, used or repaired hearing instruments, and includes the serial number provided at the time of delivery, the length of warranty on the hearing instrument, and whether the warranty is backed by the dealer,

manufacturer, or repair shop. In addition, all used or reconditioned instruments must be clearly marked as such.

4. "Measuring of hearing" as used in North Dakota Century Code section 43-33-04 includes that such measure should be conducted in an environment which takes into account background noise levels and their effect upon the acquisition of valid threshold measurements. Testing should not be conducted in an environment which would render thresholds invalid.
5. "Measuring of human hearing" as used in North Dakota Century Code section 43-33-04 includes the measurement of human hearing through the utilization of an audiometer and those procedures common to otological and audiological assessment of hearing acuity.
6. "Sale" as used in North Dakota Century Code chapter 43-33 must be deemed made or completed when a purchase agreement of receipt is signed by the purchaser, total or partial payment is made, and the hearing instruments are ordered.
7. "Week" means a period of forty hours.

**History:** Effective July 1, 1996; amended effective April 1, 1999.

**General Authority:** NDCC 43-33-14

**Law Implemented:** NDCC 43-33-01

**CHAPTER 104-03-01**

104-03-01-06. Fees. The fees charged by the board are as follows:

1. Initial license or certificate of endorsement, and annual renewals thereafter, \$150.00;
2. Written exam, \$50.00; and
3. Practicum, \$50.00.

**History:** Effective April 1, 1999.

**General Authority:** NDCC 43-33-14

**Law Implemented:** NDCC 43-33-06, 43-33-07, 43-33-11

