

**NORTH DAKOTA ADMINISTRATIVE CODE**

Supplements 246 through 248

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



## TABLE OF CONTENTS

|  |     |
|--|-----|
| Agriculture, Commissioner of (February 2000)                           | 1   |
| Game and Fish Department (January 2000)                                | 5   |
| State Department of Health (February 2000)                             | 21  |
| Highway Patrol (February 2000)   | 35  |
| Indian Scholarships, Board of (February 2000)                          | 61  |
| Insurance, Commissioner of (January 2000,<br>February 2000)            | 73  |
| Board of Animal Health (February 2000)                                 | 173 |
| Board of Pharmacy (December 1999)                                      | 183 |
| Public Instruction, Superintendent of (January 2000,<br>February 2000) | 189 |
| Real Estate Commission (December 1999)                                 | 391 |
| Department of Human Services (January 2000)                            | 403 |
| Workers Compensation Bureau (January 2000)                             | 473 |



**TITLE 7**  
**Agriculture, Commissioner of**



FEBRUARY 2000

CHAPTER 7-06-01

7-06-01-02. **Noxious weeds listed.** Weeds declared noxious shall be confined to weeds that are difficult to control, easily spread, and injurious to public health, crops, livestock, land, or other property. The following weeds have been declared noxious for the purpose of North Dakota Century Code chapter 63-01.1:

1. Absinth wormwood (~~artemisia-absinthim~~) (artemisia absinthium L.).
2. Canada thistle (~~cirsium-arvense~~) (cirsium arvense (L.) scop.).
3. Field--bindweed-(~~convolvulus-arvensis~~);--also-known-as-creeping jenny (Diffuse knapweed (centaurea diffusa lam.)).
4. Hemp-(~~cannabis-sativa~~);--also-known-as-marijuana (Field bindweed (convolvulus arvensis L.)).
5. Hoary---eress---(~~cardaria--draba~~);--also--known--as--perennial peppergrass-or-white-top (Leafy spurge (euphorbia esula L.)).
6. Leafy--spurge--(~~euphorbia--esula~~) (Musk thistle (carduus nutans L.)).
7. Musk--thistle--(~~carduus--nutans~~) (Purple loosestrife (lythrum salicaria L., lythrum virgatum L., and all cultivars)).
8. Perennial---sowthistle--(~~sonchus--arvensis~~) (Russian knapweed (centaurea repens L.)).

9. Russian---knapweed---(~~centaurea---repens~~) Spotted knapweed  
(centaurea maculosa lam.).
10. ~~Spotted--knapweed--(centaurea--maculosa lam)~~ Yellow starthistle  
(centaurea solstitialis L.).

**History:** Amended effective June 1, 1985; February 1, 2000.

**General Authority:** NDCC 28-32-02, 63-01.1-03

**Law Implemented:** NDCC ~~63-01-1-02~~ 63-01.1-03

**TITLE 30**  
**Game and Fish Department**



JANUARY 2000

CHAPTER 30-02-02

**30-02-02-01. Definitions.** ~~The terms used throughout this article have the same meaning as in North Dakota Century Code title 20.1 except:~~

1. ~~"Quarry"--means unprotected species and any others included in the governor's proclamation. "Department" means the North Dakota game and fish department.~~
2. "Falconry" means the sport of taking or attempting to take quarry (any species of animal) by means of a trained raptor.
3. "Replacement bird" means a raptor obtained to replace one which has died in captivity, has escaped, or is released to the wild.
4. "Service" means the United States fish and wildlife service.
5. "Take" or "obtain" means to trap, capture, propagate in captivity; or acquire by means of transfer or attempt to trap, capture; or propagate in captivity; or acquire by means of transfer a raptor for the purposes of falconry.

**History:** Amended effective December 1, 1982; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

**30-02-02-02. Permit License requirements.** A valid North Dakota falconry permit license is required before any person resident may take, possess, sell, barter, or transport a raptor for falconry purposes or practice falconry in North Dakota. A nonresident must have a valid

joint state and federal falconry license issued by the state in which the licensee resides in order to possess or transfer a raptor for falconry purposes or practice falconry in North Dakota. In addition, any nonresident licensee who wishes to practice falconry in North Dakota must purchase the appropriate North Dakota nonresident hunting licenses.

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

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

**30-02-02-03. Application procedures.** An applicant who wishes to take, possess, sell, barter, or transport a raptor for falconry purposes, or practice falconry in as a resident of North Dakota must submit an application for a falconry permit license to the game-and-fish department.

Application forms must be obtained from the ~~game--and--fish~~ department and will include the following information:

1. Applicant's name and permanent home address.
2. Applicant's birth date, social security number, and driver's license number.
3. ~~A--brief--description--of--applicant's--interest--and--previous experience--with--the--sport--of--falconry.~~
4. A list of number, species, age (if known), sex (if known), date of acquisition, and source of raptors already legally held in the applicant's possession.

In addition, any applicant who has not possessed a resident North Dakota falconry license within the previous twelve months must also include a brief description of personal experience with the sport of falconry, if any, including the most recent permit (license) class and number of years of active experience at that level, the date (year) of the written falconry examination, and the state, province, or country where the most recent permit was held.

**History:** Amended effective January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

**30-02-02-04. Permit License conditions.** In addition to the general conditions, every ~~permit~~ license issued shall be subject to the following special conditions:

1. A permittee licensee may trade-or transfer a raptor to another permittee licensee if the transportation transaction occurs entirely within North Dakota, the North-Dakota-game-and-fish department has been notified in writing of such a--trade--or transfer, and no money or other consideration is involved.
2. A permittee licensee may trade-or transfer a raptor to another permittee licensee in an interstate transaction if the prior written approval of the game-and-fish department and involved state agencies is obtained and no money or other consideration is involved in the transaction.
3. A licensee may sell or barter any lawfully possessed raptor that is bred in captivity under authority of a federal raptor propagation permit and banded with a numbered seamless marker. All transactions of this type are subject to additional conditions specified by 50 CFR 21.30(d)(6).
4. A licensee may not propagate raptors without prior acquisition of a valid federal raptor propagation permit as described in 50 CFR 21.28(d)(9). Raptor propagation is subject to all conditions specified by 50 CFR 21.30, as amended, and 50 CFR 21.28(d)(9).
5. A licensee may not take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such licensee submits a form 3-186A (migratory bird acquisition/disposition report) for each bird possessed.
6. A raptor may not be possessed under authority of a falconry permit unless the licensee has a properly completed form 3-186A (migratory bird acquisition/disposition report) for each bird possessed.
7. All raptor species taken from the wild must be reported on form 3-186A (migratory bird acquisition/disposition report) to the issuing office within five days of taking. A raptor removed from the wild may not be banded with a seamless numbered band. Any peregrine falcon (*falco peregrinus*), gyrfalcon (*falco rusticolus*), or Harris hawk (*parabuteo unicinctus*), which are considered sensitive species, must be banded if possessed for falconry purposes, in accordance with section 30-02-02-09 and 50 CFR 21.29(h).
8. The loss or removal of any band must be reported to the issuing office within five working days of the loss. The lost or removed band must be replaced by a permanent, nonreusable band supplied by the service. A form 3-186A (migratory bird acquisition/disposition report) must be filed in accordance with subsection 5 reporting the loss of the band and rebanding.

9. A licensee may not sell, purchase, or barter or offer to sell, purchase, or barter any raptor unless the raptor is marked on the metatarsus by a seamless, numbered band supplied by the service.

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03, 50 CFR

**30-02-02-05. Classes of permits licenses.**

**1. Apprentice class. A-permittee-shall**

- a. A licensee must be at least eighteen fourteen years old and have a sponsor who is a holder of a general or master falconry permit for the first two years in which an apprentice permit is held; regardless of the age of the permittee.
- b. Before applying for an apprentice class license, a potential applicant must first obtain a willing sponsor, pass a written examination, and pass an equipment and facilities inspection.
- c. Sponsors must be master class licensees or general class licensees with at least three years of experience at the general class level. A sponsor may not have more than three apprentices at any one time. An apprentice class licensee must have a sponsor during the entire apprenticeship.
- d. A licensee may possess only an American kestrel (falco sparverius) or a red-tailed hawk (buteo jamaicensis), which must be taken from the wild by the licensee as provided in 50 CFR 21.29(e)(1)(iv). A licensee may not possess more than one raptor and may not obtain more than one replacement bird during any twelve-month period.
- e. A licensee may take raptors from the wild only during the August 25 through December 3 period.

**2. General class. A-permittee-shall**

- a. A licensee must be at least eighteen years old and
- b. A licensee must have at least two years' active experience in the practice of falconry at the apprentice class level, or its equivalent.

c. When an apprentice class licensee applies for a general class license, the licensee's sponsor must submit to the department a report that details the applicant's progress in falconry and qualifications and includes a recommendation for the general class license.

d. A permittee licensee may not possess more than two raptors and may not obtain more than two raptors for replacement birds during any twelve-month period; and a permittee, as provided for in 50 CFR 21.29(e)(2)(iii).

e. A licensee may not take, transport, or possess any golden eagle; a licensee may not take, transport, or possess any species listed as threatened or endangered in 50 CFR 17; but a licensee may transport or possess individuals of such species that are captive bred, in accordance with 50 CFR 17.

3. **Master class. An applicant shall**

a. A licensee must have at least five years' active experience in the practice of falconry at the general class level, or its equivalent.

b. A permittee licensee may not take, transport, or possess any raptor species listed as endangered or threatened in part 17 of title 50, Code of Federal Regulations 50 CFR 17, but may transport or possess individuals of such species that are captive bred, in accordance with 50 CFR 17.

c. A licensee may not take, in any twelve-month period, more than one raptor listed as threatened in 50 CFR 17, and then only in accordance with 50 CFR 17.

d. A licensee may not possess more than three raptors and may not obtain more than two raptors taken from the wild as replacements during any twelve-month period.

4. ~~Resident and nonresident permits. Permits will be classified as resident or nonresident depending on the permittee's permanent home address.~~

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

History: Amended effective April 1, 1986; January 1, 2000.

General Authority: NDCC 20.1-14-03

Law Implemented: NDCC 20.1-14-03, 50 CFR 17, 50 CFR 21.29

30-02-02-06. Examination. Before any North Dakota falconry permit license is issued, the applicant shall be required to answer

correctly at least eighty percent of the questions on a supervised examination provided or approved by the ~~United States fish and wildlife~~ service and administered by the ~~North Dakota game and fish~~ department, relating to basic biology, care and handling of raptors, literature, laws, regulations, or other appropriate subject matter. ~~Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty-dollar fee.~~ This requirement does not apply to license renewals under section 30-02-02-15.

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

**30-02-02-07. Facilities and equipment.** Before a North Dakota falconry ~~permit~~ license is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the department as meeting the following standards; this requirement does not apply to license renewals under section 30-02-02-15, although each licensee's facilities and equipment should be inspected at least every three years:

1. ~~Facilities~~ Housing facilities. The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, and undue disturbance. The applicant shall have the following facilities:
  - a. Indoor facilities (mews) shall be large enough to allow easy access for caring for the raptors housed in the facility. If more than one raptor is to be kept in the mews, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body, and a secure door that can easily be closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.
  - b. Outdoor facilities (weathering area) shall be fenced and covered with netting or wire, or roofed to protect the birds from disturbances and attack by predators. The area shall be large enough to ensure that the birds cannot strike any obstacle when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.
2. **Equipment.** The following items shall be in the possession of the applicant before the applicant can obtain a permit license:

- a. Jesses. At least one pair of ~~alumer~~ alumer jesses or similar type constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free. (Traditional one-piece jesses may be used on raptors when not being flown);
  - b. Leashes and swivels. At least one flexible, weather-resistant leash and one strong swivel of acceptable falconry design;
  - c. Bath container. At least one suitable container, two to six inches [5 to 15.25 centimeters] deep and wider than the length of the raptor, for drinking and bathing for each raptor;
  - d. Outdoor perches. At least one weathering area perch of an acceptable design shall be provided for each raptor; and
  - e. Weighing device. A reliable scale or balance suitable for weighing the raptor or raptors held and graduated to increments of not more than one-half ounce [15 grams] shall be provided.
3. **Maintenance.** All facilities and equipment shall be kept at or above the preceding standards at all times.
  4. **Transportation - Temporary holding.** A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperature and excessive disturbance, for a period not to exceed thirty days.

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

**30-02-02-08. Waiver of examination and inspection requirements.**  
 In recognition of federal falconry standards (Code---of---Federal Regulations--title--50;--part-21 50 CFR 21, sections 28 and 29), persons the department may waive the examination under section 30-02-02-06 before issuing a North Dakota falconry license to applicants showing proof of a valid ~~current~~ falconry permit or license ~~from current~~ within the previous two years in another state ~~may-waive-the~~ meeting standards for an examination (section-30-02-02-02) (see section 30-02-02-06) and inspection--of requirements for facilities and equipment (section 30-02-02-03)-prior--to--being--issued--a--North--Dakota--permit--in--the appropriate-class (see section 30-02-02-07).

**History:** Amended effective January 1, 2000.

General Authority: NDCC 20.1-14-03  
Law Implemented: NDCC 20.1-14-03, 50 CFR 21

**30-02-02-09.** United--States--fish--and--wildlife-marker-required Marking. No raptor may be acquired unless the person acquiring the raptor first obtains a numbered nonreusable marker supplied by the United States fish and wildlife service and attaches it to the raptor immediately upon acquisition. All peregrine falcons (falco peregrinus), gyrfalcons (falco rusticolis), and Harris hawks (parabuteo unicinctus), which are considered sensitive species, must be marked in accordance with federal falconry standards 50 CFR 21.29(h) if possessed for falconry purposes.

1. An--inventory-and-description-of-all-raptors-held-within-North Dakota-except-those-held-for-scientific-or-zoological-purposes shall-be-made-and-reported-to-the-department-by-July-31,-1976. Any peregrine falcon, gyrfalcon, or Harris hawk, except a captive-bred raptor lawfully marked by a numbered, seamless band issued by the service, must be banded with a permanent, nonreusable, numbered band issued by the service.
2. Any peregrine falcon, gyrfalcon, or Harris hawk possessed for falconry purposes must be banded at all times. Loss or removal of any band must be reported to the issuing office within five working days of the loss and must be replaced with a permanent, nonreusable, numbered band supplied by the service.
3. The alteration, counterfeiting, or defacing of a marker is prohibited except that permittees licensees may remove the rear tab on markers and may smooth any imperfect surface provided the integrity of the marker and numbering are not affected.

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

History: Amended effective April 1, 1986; January 1, 2000.

General Authority: NDCC 20.1-14-03

Law Implemented: NDCC 20.1-14-03, 50 CFR 21.29

**30-02-02-10.** Faking Restrictions for taking of raptors from the wild.

1. The--department--shall-be-notified-in-writing-of-any-intent-to obtain-a-raptor-for-falconry-purposes,-regardless-of-means--or source--of-acquisition,-prior-to-actual-taking. Any licensee interested in obtaining a raptor for falconry purposes must obtain permission in writing from the department prior to actual taking, regardless of potential means or source of acquisition.

2. Upon approval of a request to take sensitive species of raptors (see section 30-02-02-09) from the wild, the department shall provide the licensee with the appropriate bands in accordance with federal falconry standards (50 CFR 21.29). Any unused bands must be returned to the department no later than thirty days following the end of the season, as specified in subsection 4.
3. Young birds not yet capable of flight (eyasses eyases) may only be taken by a general or master falconer during the period specified by the department and no resident master or general class licensee. No more than two eyasses eyases may be taken by the same permittee a licensee during the specified period. Eyasses any calendar year. When a properly licensed falconer takes an eyas or eyases, at least one eyas must be left in the respective nest.
3. First-year (passage) birds may be taken only during the period specified by the state.
4. Raptors may be taken only between May fifteenth and November fifteenth of each year, except that a marked raptor may be retrapped at any time. Raptors may be taken from the wild only during the following time periods, except that a marked raptor may be retrapped at any time:
  - a. April 10, 15, and 20.
  - b. May 26 through July 12.
  - c. August 25 through December 31.
5. Only American kestrels (falco sparverius) may be taken when over one year old, except that any raptor other than endangered or threatened species taken under a depredation (or special purpose) permit may be used for falconry by general and master falconers.
6. Nonresident permittees may not take raptors from the wild in North Dakota. Nonresident falconers may take raptors from the wild in North Dakota only with written authorization from the department director, only during the August 25 through December 31 period in even-numbered calendar years, and only if in possession of a current North Dakota nonresident hunting license for small game. Nonresident take of wild raptors in North Dakota is further restricted as follows:
  - a. The total nonresident take of wild raptors in North Dakota is limited to a single written authorization allowing take of one individual raptor in any even calendar year;
  - b. A request by a nonresident to take a wild raptor in North Dakota must be received by the department before August of

the same calendar year in which a raptor is to be taken;  
and

- c. Nonresident licensees requesting to take a raptor from the wild in North Dakota must have a valid, current falconry license from a state that allows nonresident take of wild raptors for falconry purposes. A copy of the licensee's state regulations pertaining to allowance of nonresident take of wild raptors must accompany any request to take a raptor from the wild in North Dakota, along with photocopy proof of falconry licenses or permits.

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

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03, 50 CFR 21.29

**30-02-02-11. Possession of raptors prior to enactment of rules.**

1. A person who possesses a lawfully acquired raptor before the enactment of these regulations and who fails to meet the permit license requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the United-States-fish-and-wildlife service and cannot be replaced if death, loss, release, or escape occurs.
  
2. A person who possesses raptors before the enactment of these rules in excess of the number allowed under his the person's class permit license shall be allowed to retain the extra raptors. All such birds shall be identified with markers supplied by the service and no replacement can occur, nor may any additional raptor be obtained until the number in possession is at least one less than the total number authorized by the class of permit license held by the permittee licensee.

**History:** Amended effective January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

**30-02-02-12. Release of birds to wild.** A falconry permitholder licenseholder shall obtain written authorization from the game-and--fish department before any species not indigenous to that-state North Dakota is intentionally released to the wild, at which time the marker from the released bird shall be removed and surrendered to the game-and-fish department. The marker from an intentionally released bird which is indigenous to that--state North Dakota shall also be removed and surrendered to the game-and-fish department. A standard federal bird band shall be attached to such birds by the state or service-authorized

federal bird bander whenever possible. Any person who violates this section is guilty of a noncriminal offense and shall pay a seventy-five dollar fee.

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03, 50 CFR

**30-02-02-13.** ~~Transfer--to--another--person~~ Temporary care by authorized persons. ~~Another--person--may--care--for--the--birds--of--a permittee--if--written--authorization--from--the--permittee--accompanies--the birds--when--they--are--transferred;--provided--that--if--the--period--of--care will--exceed--thirty--days;--the--game--and--fish--department--shall--be--informed in--writing--of--the--permittee--of--this--action--within--three--days--of--the transfer--and--informed--where--the--birds--are--being--held;--the--reason--for--the transfer;--who--is--caring--for--them--and--approximately--how--many--days--they will--be--in--the--care--of--the--second--person;--Feathers--that--are--molted--or those--feathers--from--birds--held--in--captivity--that--die;--may--be--retained and--exchanged--by--permittees--only--for--imping--purposes.~~ A raptor possessed under authority of a falconry license may be temporarily held by a person other than the licensee for maintenance and care for a period not to exceed thirty days, only if the person providing temporary care is otherwise authorized to possess raptors. The raptor must be accompanied at all times by a properly completed form 3-186A (migratory bird acquisition/disposition report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

**History:** Amended effective January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03, 50 CFR

**30-02-02-14.** ~~Annual---falconry---report~~ Reporting. ~~By--July thirty--first~~ During July of each license renewal year, a permittee licensee shall submit a falconry report to the game-and-fish department. A report shall contain the following:

1. A listing of all raptors in ~~the--permittee's~~ possession on June thirtieth of the year in which the report is filed by species, marker number if marker required (see subsection 8 of section 30-02-02-04 and section 30-02-02-09), sex (if known), age (if known), and date and where ~~or--from--whom~~ acquired;
2. A listing of all raptors ~~possessed--or~~ obtained since the previous annual report or license application, but no longer possessed, by species, marker number if marker required (see subsection 8 of section 30-02-02-04 and section 30-02-02-09), sex (if known), age (if known), ~~date--and--where--or--from--whom obtained--or--given--to;--whether--escaped;--died;--or--released;--and when--the--event--occurred:~~ date received and date relinquished,

where obtained, and to whom or how it was relinquished, whether by escape, death, or release; and

3. Any other information required by the department.

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

**History:** Amended effective April 1, 1986; January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03, 50 CFR

30-02-02-15. Duration of permits and cost of licenses. A permit license or the renewal of a permit license is valid when issued by the game--and--fish department and expires on June thirtieth of the second third calendar year after it is issued. The triannual fee for falconry licenses (all classes) is fifty dollars.

**History:** Amended effective January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

30-02-02-16. Cost of permits Other restrictions and provisions. The annual fee for falconry permits (all classes) shall be fifteen dollars.

1. Feathers that are molted or those feathers from birds held in captivity that die may be retained and exchanged by licensees only for imping purposes.
2. It is unlawful to intentionally loose raptors against protected wildlife species except when explicitly open to hunting by governor's proclamation. Any licensee whose hunting raptor accidentally kills wildlife that is out of season or of the wrong species or sex shall leave the dead wildlife where it lies, except that the raptor may feed upon the dead wildlife before leaving the site of the kill.
3. The department may request that any master class licensee voluntarily serve, for an indefinite period, as a representative to administer examinations under section 30-02-02-06, to conduct inspections of facilities and equipment (see section 30-02-02-07), and to provide general counsel on falconry issues.

**History:** Amended effective January 1, 2000.

**General Authority:** NDCC 20.1-14-03

**Law Implemented:** NDCC 20.1-14-03

## CHAPTER 30-03-05

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

In the absence of an outside sponsor, the tournament committee may retain a maximum of fifteen percent of the gross proceeds from entry or participation fees for expenses incurred in putting on the contest.

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

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

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

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

1. In a boat tournament, committee/sponsors shall provide boat launching and loading assistance to tournament participants.
2. ~~All approved tournaments shall utilize a tagging system designed to prevent high grading of game fish. This requirement does not apply to live release fishing contests.~~
3. The ratio of tournament patrol boats to participant boats shall at no time be less than one to twenty in fishing contests involving one hundred or fewer boats and one to twenty-five for contests involving more than one hundred boats.
4. 3. The North Dakota game and fish department may add further tournament regulation restrictions if deemed necessary.

5- 4. Fishing contests for all game and nongame fish, with the exception of paddlefish, pallid and shovelnose sturgeon, zander, and grass carp (white amur) are allowable.

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

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

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

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



FEBRUARY 2000

CHAPTER 33-06-01

33-06-01-01. Reportable conditions. All reports of and information concerning reportable conditions shall be confidential and not open to inspection. The following designated reportable conditions are hereby declared to be reportable in this state must be reported to the state department of health by the persons designated in chapter 36-06-02. If any reportable condition is designated by an asterisk, an appropriate sample or isolate must be submitted to the division of microbiology (public health laboratory) in addition to the required report.

1. ~~Acquired-immune-deficiency-syndrome-(A-I-D-S):~~
2. Anthrax\*.
3. 2. Botulism\*.
3. Brucellosis\*.
4. Campylobacter enteritis\*.
5. Cancer, all invasive and in situ carcinomas (except basal and squamous cell skin carcinomas or carcinoma in situ of the cervix uteri).
6. Chickenpox (varicella).
7. Chlamydial infections.
8. Cholera\*.

9. Cryptosporidiosis.
10. Diphtheria\*.
11. Encephalitis (arboviral encephalitides only).
12. Enteric E. coli infection (includes E. coli 0157:H7 infection and infections caused by other enterohemorrhagic, enteropathogenic, or enteroinvasive E. coli)\*.
13. Enterococcus, vancomycin resistant (VRE)\*.
14. Foodborne or waterborne outbreaks.
- ~~14~~ 15. Giardiasis.
- ~~15~~ 16. Gonorrhea.
- ~~16~~ 17. Hantavirus\*.
- ~~17~~ 18. Haemophilus influenzae b infection (invasive infection with haemophilus influenzae isolated from blood, cerebral spinal fluid, or other normal sterile site)\*.
- ~~18~~ 19. Hemolytic uremic syndrome.
- ~~19~~ 20. Hepatitis (specify type).
- ~~20~~ 21. Human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS)\*.
- ~~21~~ ~~---Infantile-group-B-streptococcal-infection.~~
22. Influenza.
23. Lead poisoning blood level greater than or equal to 10 µg/dl.
24. Legionellosis.
25. Listeriosis\*.
26. Lyme disease.
- ~~26~~ 27. Malaria\*.
- ~~27~~ 28. Measles (rubeola)\*.
- ~~28~~ 29. Meningitis, bacterial (all bacterial species isolated from cerebrospinal fluid)\*.
- ~~29~~ 30. Meningococcal disease (invasive infection with neisseria meningitidis isolated from blood, cerebral spinal fluid, or other normal sterile site)\*.

31. Mumps.
- 30- 32. Nosocomial outbreaks in institutions.
- 31- 33. Pertussis\*.
- 32- 34. Plague\*.
- 33- 35. Poliomyelitis\*.
- 34- 36. Q fever\*.
- 35- 37. Rabies (animal or human).
- 36- 38. Rocky Mountain spotted fever.
- 37- 39. Rubella\*.
- 38- 40. Salmonellosis\*.
- 39- 41. Scabies outbreaks in institutions.
- 40- 42. Shigellosis\*.
- 41- 43. Staphylococcus aureus, methicillin resistant (MRSA) (invasive infection with staphylococcus aureus isolated from blood, cerebral spinal fluid, or other normal sterile site demonstrating methicillin resistance)\*.
44. Staphylococcus aureus, vancomycin resistant (VRSA) (any staphylococcus aureus isolate demonstrating intermediate or greater resistance to vancomycin of MIC greater than or equal to 8 µg/ml)\*.
45. Streptococcus, ---group---A---invasive---infection Streptococcal infections (invasive infection of streptococcus, group A or B or streptococcus pneumoniae isolated from blood, cerebral spinal fluid, or other normal sterile site)\*.
42. Streptococcus---pneumoniae---(drug---resistant---streptococcus pneumoniae-isolated-from-blood,-cerebral-spinal-fluid-or--other normal--sterile--site--which-is-resistant-to-at-least-one-drug commonly-used-for-treatment)\*.
- 43- 46. Syphilis.
- 44- 47. Tetanus.
- 45- 48. Toxic-shock syndrome\*.
- 46- 49. Trichinosis.

47- 50. Tuberculosis (tuberculosis disease caused by mycobacterium tuberculosis or mycobacterium bovis)\*.

51. Tularemia\*.

48- 52. Tumors of the central nervous system.

49- 53. Typhoid fever\*.

50- 54. Unusual disease cluster or outbreak.

55. Weapons of mass destruction suspected event.

**History:** Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990; January 1, 1991; February 1, 1992; May 1, 1994; January 1, 1995; July 1, 1996; February 1, 2000.

**General Authority:** NDCC 23-07-01

**Law Implemented:** NDCC 23-07-01

CHAPTER 33-06-04

33-06-04-06. Rabies.

1. Definitions:---As--used-in-this-subsection,-unless-the-context otherwise-indicates:
  - a:--"Bite"--means-any-penetration-of-the-skin-of-a-human-by-the teeth-of-a-domestic-animal;
  - b:--"Confinement"--separation--of--the--domestic--animal--from humans;-other-than-the-owner-and-members--of--the--owner's family;-and--other--animals--through--restriction--of--the animal-in-a-house;-bar;-fenced-yard-or-pen;-or-through-use of-a-leash-or-tether;
- 2: How reported. Whenever If any physician or other person veterinarian has knowledge that any person or animal has been bitten or injured scratched by, or otherwise exposed to a dog or, other domestic animal, or a wild mammal, infected or suspected of being infected with rabies and whenever the physician or person has knowledge of a case of rabies or suspected rabies in animals, the physician or person veterinarian shall report the fact immediately these facts within forty-eight hours to the state department of health and consolidated laboratories. The requirements of this subsection do not apply to dog or cat bites, scratches, or saliva exposure if there is a standing order or agreement with health care providers to report animal bites or possible exposure to rabies to a local law enforcement agency.
- 3:--Any--domestic--animal--that--bites--a--human--where--the--owner--of--the animal--can--produce--evidence--of--adequate--rabies--immunization must--be--confined--at--the--owner's--residence--for--a--period--of--at least--ten--days--from--the--time--of--bite--and--be--evaluated--by--a licensed--veterinarian--prior--to--release--or--at--the--first--sign--of illness;---Evidence--of--the--bite--must--be--confirmed--by--a physician--or--other--qualified--health--care--professional--before confinement--of--the--animal--is--required;
- 4:--Any--domestic--animal--that--bites--a--human--where--adequate--evidence of--rabies--vaccination--is--not--available--must--be--confined--at--the owner's--residence--or--impounded--for--a--period--of--ten--days--from the--time--of--the--bite;---Judgment--regarding--impoundment--or confinement--must--be--made--by--a--law--enforcement--officer--having appropriate--jurisdiction;---The--officer--may--consult--with--a veterinarian;-health--officer;-or--physician--prior--to--making such--judgment;---Such--animal--must--be--confined--or--impounded--and observed--at--the--owner's--expense--and--evaluated--by--a--licensed veterinarian--at--the--beginning--of--confinement;-at--the--first

sign--of--any--illness--during--confinement--and--prior--to--release  
from--confinement;

5--Any--domestic--animal--suspected--of--having--rabies--regardless--of  
the--animal's--immunization--history--must--be--placed--in--strict  
isolation--under--the--observation--of--a--licensed--veterinarian--for  
ten--days--at--the--owner's--expense--If--the--animal--shows--clinical  
signs--of--rabies--during--the--period--of--isolation--it--must--be  
humanely--destroyed--immediately--in--a--manner--that--preserves--the  
brain--intact--and--the--brain--tissue--shall--be--examined--for  
rabies;

6--Any--stray--or--unwanted--domestic--animal--or--wild--animal--that  
bites--a--person--must--be--humanely--destroyed--immediately--in--a  
manner--that--preserves--the--brain--intact--and--the--brain--tissue  
must--be--examined--for--rabies;

7: 2. Requests Vaccine replacement. The state health officer, or  
the health officer's designee, in that person's discretion may  
provide for the replacement of rabies vaccine and rabies  
immune globulin used to treat possible exposure to rabies. Any  
request for rabies vaccine and rabies immune globulin must be  
in writing, must be signed by the attending--physician person  
who received postexposure vaccine or the person's parent or  
guardian, and must indicate that the patient person was  
possibly exposed to rabies, not through the person's own fault  
or that of the person's parent or guardian, and is indigent  
financially unable to pay for the vaccine and immune globulin.  
A patient person will not be considered indigent financially  
unable to pay if an:

a. An insurer or a governmental agency other than the state  
department of health and consolidated laboratories would  
otherwise be obligated to provide or reimburse the cost of  
the includes as a covered benefit, or another person is  
liable for, rabies vaccine or rabies immune globulin;

b. The person is eligible for complimentary vaccine or immune  
globulin from a vaccine manufacturer; or

c. The person, or the person's family, has an adjusted gross  
income of more than one hundred thirty-three percent of  
the poverty line determined in accordance with 42 U.S.C.  
9902(2) applicable to a family of the size involved or  
assets in excess of those permitted under section  
75-02-02.1-26, including the exceptions allowed under  
section 75-02-02.1-27.

Notwithstanding the limitations of this subsection, the state  
health officer, or the state health officer's designee, in  
that person's discretion also may supply rabies vaccine and  
immune globulin to a person if more than one person in a  
family requires postexposure treatment or some other hardship

would prevent a person from receiving medically necessary treatment.

3. General scientific guidance. In the enforcement of the rabies control law, the department, local public health units, local law enforcement agencies, and veterinarians shall apply applicable guidelines set forth in the compendium of animal rabies control and the center for disease control's advisory committee on immunization practices recommendations for human rabies prevention.

**History:** Amended effective July 1, 1987; October 1, 1988; May 1, 1989; January 1, 1990; February 1, 2000.

**General Authority:** NDCC 23-01-03, -28-32-02 23-36

**Law Implemented:** NDCC 23-01-03, -23-01-18 23-36

## CHAPTER 33-06-05

### 33-06-05-01. Requirements.

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

- a. "Age-appropriate immunizations" refers to the vaccines a child should receive based on age and previous immunization history as recommended by the advisory committee of on immunization practices of the United States department of health and human services and outlined by the North Dakota immunization schedule.
- b. "Beliefs" as used in subsection 3 of North Dakota Century Code section 23-07-17.1 means sincerely held religious, philosophical, or moral beliefs which are not a pretense for avoiding legal requirements ~~and--does--not--include secular---beliefs---such---as---these---beliefs--based--upon philosophy-or-science.~~
- c. "Institution" includes all early childhood facilities, head start programs, preschool ~~education~~ educational facilities, public and private kindergartens, and elementary and high schools operating in North Dakota.
- d. "~~Institution~~ Institutional authority" means anyone designated by the governing body of an institution.

#### 2. Minimum requirements.

- a. Minimum requirements for children attending early childhood facilities, head start programs, and preschool ~~education~~ educational facilities shall be age-appropriate ~~inoculations~~ immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, and rubella. Each child must also be adequately immunized for haemophilus influenzae type B disease at the age-appropriate schedule recommended by the state department of health.
- b. Minimum requirements for children attending kindergartens and elementary and high schools shall be age-appropriate ~~inoculations~~ immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, and rubella. A second dose of measles, mumps, and rubella (MMR) vaccine is required ~~age-appropriately-at-school-entry--into~~ for children who entered kindergarten or first grade or seventh-grade in the 1992-93 school year. Each subsequent year, the next higher grade will be included in the second dose immunization requirement so those students transferring into North Dakota schools are added to the MMR immunization cohort.

- c. ~~Exception to these minimum requirements for those children who are not age appropriately immunized shall be determined by the state health officer or state health officer's designee.~~ Effective with the 2000-01 school year, in addition to the immunizations previously mentioned, a student must complete the hepatitis B vaccine series prior to entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the hepatitis B immunization requirement so those students transferring into North Dakota schools are added to the hepatitis B immunization cohort.
3. **Recordkeeping and reporting.** Records and reports requested by the state department of health shall be completed and submitted to the state department of health.
- a. Certificates of immunization or other official proof of immunization must be presented to the designated ~~institution~~ institutional authority before any child is admitted to an institution. The parent or guardian of a child claiming a medical or belief exemption shall present an appropriately signed statement of exemption to the designated institutional authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility. ~~An appropriately signed certificate of immunization must be presented to the designated institution authority for medical or "belief" exemptions.~~
- b. The school or early childhood facility immunization summary report must be submitted to the state department of health by ~~October~~ November first of each year or such other annual date as the department may designate.
4. **Appointment of an ~~institution~~ institutional authority.**
- a. An ~~institution~~ institutional authority shall be appointed for each institution by its governing board or authorized personnel. The authority must be an employee of such institution.
- b. The name of the designated ~~institution~~ institutional authority, the institution, address, and telephone number shall be submitted to the appropriate governing state department by July first of each year.
5. **Provisional admission - Exclusion.** Any child admitted to school or early childhood facility under the provision that such child is in the process of receiving the required immunizations shall be required to receive the immunizations according to the recommended schedule set forth by the state department of health. Any child not adhering to the

recommended schedule shall provide proof of immunization or a certificate of immunization within thirty days of enrollment or be excluded from school or early childhood facility.

**History:** Amended effective November 1, 1979; September 1, 1991; January 1, 1998; February 1, 2000.

**General Authority:** NDCC 23-01-03

**Law Implemented:** NDCC 23-07-17.1

## CHAPTER 33-06-15

### 33-06-15-01. Preparation of bodies with certain communicable diseases and transportation of the dead.

1. **Communicable diseases.** The following requirements shall be met by funeral directors for bodies dead from these contagious or infectious diseases - anthrax, cholera, meningococcus meningitis, plague, smallpox, and tuberculosis:

- a. Only a licensed embalmer or an assistant who is closely supervised by a licensed embalmer shall accept and prepare the body.
- b. In the preparation of the body, appropriate outer garments and rubber gloves shall be worn.
- c. The body shall be thoroughly embalmed with an approved disinfecting fluid by arterial and cavity injection, all orifices and any discharging sinuses closed with absorbent cotton, and the body washed with an appropriate disinfecting fluid.

No embalming fluid containing compounds of arsenic, mercury, zinc, or other highly poisonous metals shall be sold or used in North Dakota for the embalming of dead human bodies for burial.

- d. Following the preparation, the instruments shall be sterilized by boiling or placing in an antiseptic solution, and the hands shall be washed with soap and water.
- e. Without delay, the body shall receive the finishing preparation, placed in a casket, and the casket permanently closed. The casket may be provided with transparent material of sufficient dimensions to disclose the face.
- f. Bodies prepared as herein stated may be accepted for transportation.

2. ~~Transportation~~ Embalming and transportation.

- a. A burial-transit permit may be issued for the bodies of those dead from causes listed under subsection 1 only if the body has been embalmed.
- b. The A burial-transit permit may be issued for the bodies of those dead from causes other than those listed under subsection 1 ~~may--be--received--for--transportation~~ without

embalming ~~providing~~ or refrigeration, provided they reach their destination within ~~twenty-four~~ forty-eight hours from the time of death. ~~Destination shall be considered the burial, cremation, or final disposition of the body.~~ If the body cannot reach its destination within the prescribed ~~twenty-four~~ forty-eight hours, it must be embalmed.

b. ~~When the transportation requirements do not apply, embalming is not required if the body is buried, cremated, or is given final disposition within forty-eight hours after death.~~

c. A burial-transit permit may be issued for the bodies of those dead from causes other than those listed under subsection 1 without embalming if they are refrigerated to a temperature of between thirty-eight and forty degrees Fahrenheit, provided they reach their destination within seventy-two hours from the time of death. If the body cannot reach its destination within the prescribed seventy-two hours with constant refrigeration, it must be embalmed.

d. Destination shall be considered the burial, cremation, or final disposition of the body. Storage of a body during the winter months when burial is difficult shall not be considered final disposition.

**History:** Amended effective February 1, 2000.

**General Authority:** NDCC 23-01-03, 23-06-07

**Law Implemented:** NDCC 23-01-03, 23-06, 23-07, 23-21

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



FEBRUARY 2000

CHAPTER 38-04-01

**38-04-01-02. Adoption of regulations.** The following parts of Title 49, Code of Federal Regulations, including amendments are adopted by reference:

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.
4. Part 391 - Qualifications of Drivers.
5. Part 392 - Driving of Motor Vehicles.
6. Part 393 - Parts and Accessories Necessary for Safe Operation.
7. Part 395 - Hours of Service of Drivers.
8. Part 396 - Inspection, Repair and Maintenance.
9. Part 397 - Transportation of Hazardous Materials; Driving.

Intrastate commercial motor vehicles with a gross vehicle weight of twenty-six thousand pounds [11793.52 kilograms] or less are exempt from all federal motor carrier safety regulations. However, vehicles with a gross vehicle weight of twenty-six thousand pounds [11793.52 kilograms] or less are not exempt from the federal motor carrier regulations or hazardous materials regulations if the vehicle is used to transport

hazardous materials requiring a placard or if the vehicle is designed to transport more than fifteen passengers, including the driver.

**History:** Effective October 1, 1983; amended effective February 1, 1999; February 1, 2000.

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

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

## CHAPTER 38-05-02

### 38-05-02-01. Standards for marking vehicles and loads.

1. Any vehicle or load exempt from width limitations as provided for in North Dakota Century Code section 39-12-04 must display red or bright orange flags that shall be mounted on the most practical outside dimension on the traffic side of the overwidth vehicle or load, front and rear. If one flag is visible from both the front and rear, only one flag would be required. All flags shall be made of red or bright orange cloth or other suitable material and shall be at least eighteen twelve inches [45-72 30.48 centimeters] by eighteen twelve inches [45-72 30.48 centimeters] in size.
2. In lieu of the flagging requirements in subsection 1:
  - a. Overwidth movements may be followed by a vehicle with lighted flashing lights that are visible from the rear for a minimum five hundred feet [152.4 meters]; or
  - b. The overwidth vehicle itself, or vehicle towing or hauling an overwidth load, may be equipped with a lighted rotating or flashing amber light or lights that are visible from the rear for a minimum five hundred feet [152.4 meters].
3. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width are ~~exempted~~ exempt from the above flagging requirements, however:
  - a. All movements shall then be preceded and followed by pilot cars equipped with a lighted rotating or flashing amber light mounted on top of the highest part of the vehicles that is visible for a minimum five hundred feet [152.4 meters];
  - b. Vehicles, or vehicles towing or hauling loads, that exceed fourteen feet six inches [441.96 centimeters] in overall width shall be equipped with a lighted rotating or flashing amber light or lights that are visible from the front and rear for a minimum five hundred feet [152.4 meters]; or
  - c. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width shall have a red or bright orange flag that is at least eighteen twelve inches [45-72 30.48 centimeters] by eighteen twelve inches [45-72 30.48 centimeters] in size mounted on a pole showing the extreme outside width and height on the traffic side of the load. If one flag is not clearly visible from the front and rear

of the vehicle, then flags must be mounted on both the front and rear of the vehicle.

**History:** Effective June 1, 1986; amended effective February 1, 2000.

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

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

CHAPTER 38-06-03

**38-06-03-01. Permit fees.** The following fees are in addition to those found in North Dakota Century Code section 39-12-02:

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.
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 movement approval form. If the permit is issued on official receipt/permit, SFN 3507, the fee is ten dollars.
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.~~ The fee for a seasonal permit is fifty dollars per year. The seasonal permit is issued to vehicles referenced in subdivision d of subsection 1 of North Dakota Century Code section 39-12-04.
4. There is a graduated fee schedule for overweight single trip movements exceeding one hundred fifty thousand pounds [68035 kilograms] gross vehicle weight.

| Gross Vehicle Weight   | Permit Fee |
|------------------------|------------|
| 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 ton/mile fee is only assessed upon that portion of gross vehicle weight exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight.
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; February 1, 2000.

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

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

STAFF COMMENT: Article 38-09 contains all new material and is not underscored so as to improve readability.

## ARTICLE 38-09

### SAFETY STANDARDS FOR PASSENGER CONTRACT CARRIERS

Chapter  
38-09-01            Safety Standards for Passenger Contract Carriers

#### CHAPTER 38-09-01 SAFETY STANDARDS FOR PASSENGER CONTRACT CARRIERS

| Section     |                                 |
|-------------|---------------------------------|
| 38-09-01-01 | General                         |
| 38-09-01-02 | Driver Qualifications           |
| 38-09-01-03 | Annual Motor Vehicle Inspection |
| 38-09-01-04 | Maintenance and Repair Program  |
| 38-09-01-05 | Hours of Service                |
| 38-09-01-06 | Tests Required                  |
| 38-09-01-07 | Retention of Records            |
| 38-09-01-08 | Insurance                       |

**38-09-01-01. General.** All passenger contract carriers transporting fewer than fifteen passengers, subject to North Dakota Century Code section 8-02-08, must register with the North Dakota highway patrol before October 1, 1999, or upon engaging in the passenger contract carrier business. Said carriers shall comply with the minimum safety standards established by this chapter.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-02. Driver qualifications.** Each contract carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification packet may be combined with the driver's personnel file.

1. The qualification file for a driver must include:
  - a. A certificate of a physical examination conducted every three years which certifies the driver's physical ability to drive a commercial motor vehicle;

- b. Documentation relating to an annual review of the driver's driving record;
  - c. Lists or certificates relating to violations of motor vehicle laws and ordinances;
  - d. Any other matters that relate to the driver's qualification or ability to drive a commercial vehicle;
  - e. The driver's application for employment;
  - f. Any responses from past employers, if required by the employer; and
  - g. A certificate of the driver's road test or a copy of the valid driver's license.
2. No driver of a contract carrier may permit or require any driver to drive if said driver has committed two or more serious traffic violations within three years. A serious traffic violation includes:
- a. Excessive speeding, fifteen miles per hour or more above the posted limit;
  - b. Driving under the influence of alcohol or drugs;
  - c. Reckless driving;
  - d. Improper or erratic lane changes;
  - e. Following a vehicle too closely; or
  - f. Traffic offenses committed in connection with a traffic crash.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-03. Annual motor vehicle inspection.**

- 1. Each contract carrier shall inspect or cause to be inspected each motor vehicle subject to its control.
- 2. A contract carrier shall not use a commercial motor vehicle unless each component identified on the inspection form (DOT annual or derivative thereof) (49 CFR part 396.21a) has passed an inspection at least once during the preceding twelve months.

3. It shall be the carrier's responsibility to ensure that individuals performing the annual inspection are qualified as prescribed in 49 CFR part 396.19.
4. Driver vehicle inspection reports.
  - a. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated. The report must cover at least the following parts and accessories:
    - (1) Service brakes;
    - (2) Parking (hand) brake;
    - (3) Steering mechanism;
    - (4) Lighting devices and reflectors;
    - (5) Tires;
    - (6) Horn;
    - (7) Windshield wipers;
    - (8) Rear vision mirrors;
    - (9) Wheels and rims; and
    - (10) Emergency equipment.
  - b. The report shall identify the motor vehicle and list any defect or deficiency discovered by or reported to the driver which would affect safety of operation of the motor vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the vehicle inspection report. On two-driver operations, only one driver needs to sign the report, provided both drivers agree as to the defects or deficiencies. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.
  - c. Prior to operating a motor vehicle, carriers or their agents shall effect repair of any items listed on the vehicle inspection report that would be likely to affect the safety of operation of the vehicle.
    - (1) Contract carriers or their agents shall certify on the report which lists any defect or deficiency that the defect or deficiency has been corrected or that

correction is unnecessary before the vehicle is again dispatched.

- (2) Contract carriers shall retain the original copy of each vehicle inspection report and the certification of repairs for at least six months from the date the report was prepared.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-04. Maintenance and repair program.**

1. Every contract carrier and its officers, drivers, agents, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply with and be knowledgeable of the carrier's maintenance program.
2. Every contract carrier shall systematically inspect (daily or weekly), repair, and maintain or cause to be inspected, repaired, or maintained all motor vehicles under its control.
  - a. Parts and accessories must be in safe and proper operating condition at all times and must be clean.
  - b. Each vehicle used to provide service must have tires with sufficient tread and a fully inflated spare tire.
  - c. There must be a secured location for personal baggage, including proper restraints.
  - d. Each vehicle must have fully operational seatbelts for all persons in the vehicle.
  - e. Each vehicle must have traction devices, studs, or chains when weather requires.
  - f. Each vehicle must be equipped with a properly working heater and air conditioner.
  - g. Each vehicle must have a fully stocked emergency road kit containing no less than a blanket, road inflator aerosol can, flares or reflective triangles, jumper cables, and a fire extinguisher.
  - h. The contract carriers shall maintain or cause to be maintained the following records for each vehicle:
    - (1) An identification number of each vehicle including the company number if so marked, serial number, make, and year. If the vehicle is not owned by said

carrier, the record must identify the name of the person furnishing the vehicle.

- (2) A means or schedule to indicate the nature and due date of various inspections and maintenance operations (tires, brakes, lubrication, etc.) to be performed.
  - (3) A record of inspection, repairs, and maintenance indicating the date and nature.
- i. The records required by this section shall be retained by the carrier at the carrier's place of business for a period of one year and for six months after the vehicle leaves the carrier's control.
  - j. A motor vehicle shall not be operated in such a condition as likely to cause an accident or a breakdown of the vehicle.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-05. Hours of service.**

1. A contract carrier may not permit or require any driver to drive or remain on duty, and the driver may not drive:
  - a. More than ten hours following eight consecutive hours off duty;
  - b. If the driver's combined on-duty and drive-time hours equal fifteen hours since last obtaining eight consecutive hours off-duty time; or
  - c. If the total number of hours of on-duty time and drive time exceed seventy hours in any period of eight consecutive days.
2. The person who employs the driver maintains and retains for a period of six months accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day.
3. Following twenty-four consecutive hours off, a driver begins a new seven-consecutive-day period and on-duty time is reset to zero.
4. The following rules will apply in determining the time a transport vehicle driver is on or off duty:

- a. Time on duty begins when the transport vehicle driver reports for duty and ends when the transport vehicle driver is finally released from duty.
  - b. Time when the transport vehicle driver is engaged in or connected with the movement of a transport motor vehicle is time on duty even when such vehicle is not actually transporting passengers.
  - c. Time spent performing any other service for the contract carrier or an associated business during a twenty-four-hour period in which the transport vehicle driver is engaged in or connected with the movement of a transport motor vehicle is time on duty.
5. A transport vehicle driver who encounters an emergency and cannot, because of that emergency, safely complete a transportation assignment within the ten-hour maximum driving time permitted by this rule may drive and be permitted or required to drive a transport motor vehicle for not more than two additional hours in order to complete that transportation assignment or to reach a place offering safety for the occupants of the transport motor vehicle and security for the transport motor vehicle if such transportation assignment reasonably could have been completed within such ten-hour period absent the emergency.
6. No later than January thirty-first of each year, a contract carrier shall inform each of its transport vehicle drivers in writing:
- a. That all time spent performing aggregate duty for one or more contract carriers and one or more independent contractors counts as time on duty under this section;
  - b. About the transport vehicle driver's responsibilities under subsection 7; and
  - c. About the penalties applicable for failure to comply with subsection 7.
7. A dually employed transport vehicle driver shall:
- a. Inform each of the driver's contract employers in writing within five days after entering into an employment relationship with an additional contract carrier; and
  - b. Ensure that each of the driver's contract carrier employers is kept informed about the transport vehicle driver's work schedule with each of the other employing contract carriers.

8. A contract carrier receiving written notification of dual employment shall retain a copy of the notification for a period of two years after the termination of such dual employment status. A copy shall be made available to representatives of the state for inspection and copying during normal business hours at the contract carrier's system headquarters and at such subsystem headquarters as may be required by the state.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-06. Tests required.**

1. Preemployment testing. Prior to the first time a driver performs any duty for an employer, the driver shall undergo testing for alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in subsection 2 or 3. No employer shall allow a driver, whom the employer intends to hire or use, to perform a duty function unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04 and has received a controlled substances test result from the medical review officer (as defined in section 40.3 of the federal motor carrier safety regulations) indicating a verified negative test result.
2. Exception for preemployment alcohol testing. An employer is not required to administer an alcohol test required by subsection 1 if the driver has undergone an alcohol test required by this section within the previous six months, with a result indicating an alcohol concentration less than 0.04.
3. Exception for preemployment controlled substances testing. An employer is not required to administer a controlled substances test required by subsection 1 if:
  - a. The driver has participated in a controlled substances testing program that meets the requirements of this section within the previous thirty days;
  - b. While participating in that program, either:
    - (1) Was tested for controlled substances within six months from the date of application with the employer; or
    - (2) Participated in the random controlled substances testing program for the previous twelve months from the date of application with the employer; and

- c. The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this chapter or the controlled substances use rule of another agency within the previous six months.
4. An employer who exercises the exception in either subsection 2 or subsection 3 shall contact the alcohol or controlled substances testing program, or both, in which the driver participates or participated and shall obtain and retain from the testing program the following information:
  - a. Name and address of the program.
  - b. Verification that the driver participates or participated in the program.
  - c. Verification that the program conforms to part 40 of the federal motor carrier safety regulations.
  - d. Verification that the driver is qualified under the rules of this chapter, including that the driver has not refused to be tested for controlled substances.
  - e. The date the driver was last tested for alcohol or controlled substances.
  - f. The results of any tests taken within the previous six months and any other violations of this chapter.
5. An employer who uses, but does not employ, a driver more than once a year to operate contract carrier's vehicles must obtain the information in subsection 4 at least once every six months. The records prepared under this section shall be maintained in accordance with section 382.401 of the federal motor carrier safety regulations. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this section and part 40 of the federal motor carrier safety regulations, the employer shall conduct a preemployment test for alcohol or controlled substances, or both.
6. Postaccident testing. As soon as practicable following an occurrence involving a contract carrier vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:
  - a. Who was performing a duty function with respect to the vehicle, if the accident involved the loss of human life; or
  - b. Who receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved:

- (1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (2) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- c. This table notes when a postaccident test is required to be conducted by subdivisions a and b.

| Type of Accident Involved  | Citation Issued to the Contract Driver | Test Must Be Performed by Employer |
|--|--|------------------------------------|
| Human Fatality   | Yes                                    | Yes                                |
|  | No                                     | Yes                                |
| Bodily Injury With Immediate Medical Treatment Away From the Scene | Yes                                    | Yes                                |
|  | No                                     | No                                 |
| Disabling Damage to Any Motor Vehicle Requiring Tow Away           | Yes                                    | Yes                                |
|  | No                                     | No                                 |

- d. Alcohol tests. If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the highway patrol upon request of the superintendent.

- (1) Type of test (reasonable suspicion or postaccident);
- (2) Triggering event including date, time, and location;
- (3) Reason test could not be completed within eight hours;
- (4) If blood-alcohol testing could have been completed with eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

- (5) Records of alcohol tests that could not be completed in eight hours shall be submitted to:

North Dakota Highway Patrol  
600 East Boulevard Avenue, Dept. 504  
Bismarck, ND 58505-0240

- e. Controlled substance tests. If a test required by this section is not administered within thirty-two hours following the accident, the employer shall cease attempts to administer a controlled substances test and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the highway patrol upon request of the superintendent.
- f. A driver who is subject to postaccident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- g. An employer shall provide drivers with necessary postaccident information, procedures, and instructions, prior to the driver operating a motor vehicle, so that drivers will be able to comply with the requirements of this section.
- h. The results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local alcohol testing requirements, and that the results of the tests are obtained by the employer.
- i. The results of a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.
- j. Exception. This section does not apply to:
- (1) An occurrence involving only boarding or alighting from a stationary motor vehicle;

- (2) An occurrence involving only the loading or unloading of passengers; or
  - (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle, as defined in this chapter, by an employer unless the motor vehicle is transporting passengers for hire.
7. Random testing. Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.
  - a. The minimum annual percentage rate for random alcohol testing shall be twenty-five percent of the average number of driver positions.
  - b. The minimum annual percentage rate of random controlled substances testing shall be fifty percent of the average number of driver positions.
  - c. The superintendent's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry.
  - d. The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the highway patrol superintendent. If the employer conducts random testing for alcohol or controlled substances, or both, through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol or controlled substances, or both, testing at the same minimum annual percentage rate under this section or any federal department of transportation alcohol or controlled substances random testing rule.
  - e. Each employer shall ensure that random alcohol and controlled substances tests conducted under this section are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.
  - f. Each employer shall require that each driver who is notified of selection for random alcohol or controlled substances, or both, testing proceeds to the test site immediately. However, if the driver is driving a contract carrier vehicle at the time of notification, the employer

shall ensure that the driver proceeds to the testing site as soon as possible.

- g. A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
8. Reasonable suspicion testing.
- a. An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
  - b. An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.
  - c. Alcohol testing is authorized by this section only if the observations required by this section are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
9. A laboratory certified pursuant to the federal workplace drug-testing program by the United States department of health and human services shall perform all drug tests conducted under this section.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-07. Retention of records.** Each employer shall maintain records of its alcohol misuse and controlled substances use prevention

programs as provided in this section. The records shall be maintained in a secure location with controlled access.

1. Each employer shall maintain the records in accordance with the following schedule:
  - a. The following records shall be maintained for a minimum of five years:
    - (1) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater;
    - (2) Records of driver-verified positive controlled substances test results;
    - (3) Documentation of refusals to take required alcohol or controlled substances, or both, tests;
    - (4) Driver evaluation and referrals;
    - (5) Calibration documentation;
    - (6) Records related to the administration of the alcohol and controlled substances testing programs; and
    - (7) A copy of each annual calendar year summary required by section 382.403 of the federal motor carrier safety regulations.
  - b. Records related to the alcohol and controlled substances collection process, except calibration of evidential breath testing devices, shall be maintained for a minimum of two years.
  - c. Records of negative and canceled controlled substances test results, as defined in part 40 of the federal motor carrier safety regulations, and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.
  - d. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.
2. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this chapter. If the record is required to be prepared, it must be maintained.
  - a. Records related to the collection process:

- (1) Collection logbooks, if used;
  - (2) Documents relating to the random selection process;
  - (3) Calibration documentation for evidential breath testing devices;
  - (4) Documentation of breath alcohol technician training;
  - (5) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
  - (6) Documents generated in connection with decisions on postaccident tests;
  - (7) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and
  - (8) Consolidated annual calendar year summaries as required by section 382.403 of the federal motor carrier safety regulations.
- b. Records related to a driver's test results:
- (1) The employer's copy of the alcohol test form, including the results of the test;
  - (2) The employer's copy of the controlled substances test chain of custody and control form;
  - (3) Documents sent by the medical review officer to the employer;
  - (4) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this chapter;
  - (5) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this chapter; and
  - (6) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results.
- c. Records concerning a driver's compliance with recommendations of the substance abuse professional.
- d. Records related to education and training:

- (1) Materials on alcohol misuse and controlled substances use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
  - (2) Documentation of compliance with the requirements of section 382.601 of the federal motor carrier safety regulations, including the driver's signed receipt of educational materials; and
  - (3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol or controlled substances, or both, testing based on reasonable suspicion.
- e. Administrative records related to alcohol and controlled substances testing:
- (1) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third-party service providers; and
  - (2) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program.
3. All records required by this section shall be maintained as required and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the highway patrol.
4. Reporting of results in a management information system.
- a. An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this chapter during the previous calendar year, when requested by the superintendent.
  - b. If an employer is notified during the month of January of a request by the superintendent to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the highway patrol by March fifteenth of that year. The employer shall ensure that the annual summary report is accurate and received by March fifteenth at the location that the highway patrol specifies in its request. The report shall be in the form and manner prescribed by the highway patrol in its request. When the report is submitted to the highway patrol by mail or electronic transmission, the information requested shall be typed, except for the

signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

- c. Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of this part shall include the following informational elements:
- (1) Number of drivers subject to testing;
  - (2) Number of urine specimens collected by type of test (e.g., preemployment, random, reasonable suspicion, or postaccident);
  - (3) Number of positives verified by a medical review officer by type of test and type of controlled substance;
  - (4) Number of negative controlled substance tests verified by a medical review officer by type of test;
  - (5) Number of persons denied a position as a driver following a preemployment verified positive controlled substances test or a preemployment alcohol test, or both, that indicates an alcohol concentration of 0.04 or greater;
  - (6) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;
  - (7) Number of drivers who refused to submit to an alcohol or controlled substances test required under this chapter;
  - (8) Number of supervisors who have received required alcohol training during the reporting period;
  - (9) Number of supervisors who have received required controlled substances training during the reporting period;
  - (10) Number of screening alcohol tests by type of test;
  - (11) Number of confirmation alcohol tests by type of test;
  - (12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test;

- (13) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater by type of test;
  - (14) Number of drivers who were returned to duty having complied with the recommendations of a substance abuse professional, in this reporting period, who previously had a verified positive controlled substance test result or engaged in prohibited alcohol misuse under the provisions of this chapter;
  - (15) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and
  - (16) Number of drivers who were found to have violated any nontesting prohibitions of this chapter and any action taken in response to the violation.
- d. A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.
5. Access to facilities and records.
- a. Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained.
  - b. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to the driver's alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.
  - c. Each employer shall permit access to all facilities utilized in complying with the requirements of this section to any state or local officials with regulatory authority over the employer or any of its drivers.
  - d. Each employer shall make available copies of all results for employer alcohol or controlled substances, or both, testing conducted under this section and any other information pertaining to the employer's alcohol misuse or

controlled substances use prevention, or both, program, when requested by any state or local officials with regulatory authority over the employer or any of its drivers.

- e. When requested by the highway patrol superintendent as part of an accident investigation, employers shall disclose information related to the employer's administration of a postaccident alcohol or controlled substances, or both, test administered following the accident under investigation.
- f. Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.
- g. An employer may disclose information required to be maintained under this section pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding arising from the results of an alcohol or controlled substances, or both, test administered under this chapter, or from the employer's determination that the driver engaged in conduct prohibited by this chapter, including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.
- h. An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08

**38-09-01-08. Insurance.** All contract carriers shall, at their own expense, obtain and maintain in force required insurance for their type of operation as required by law.

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

**General Authority:** NDCC 8-02-08

**Law Implemented:** NDCC 8-02-08



**TITLE 42**  
**Indian Scholarships, Board of**



FEBRUARY 2000

**STAFF COMMENT:** Articles 42-01 and 42-02 contain all new material and are not underscored so as to improve readability.

**ARTICLE 42-01**

**ORGANIZATION**

Chapter  
42-01-01            General Administration

**CHAPTER 42-01-01  
GENERAL ADMINISTRATION**

Section  
42-01-01-01            Organization of Indian Scholarship Program

**42-01-01-01. Organization of Indian scholarship program.**

1. **History and function.** The 1963 legislative assembly first provided for the North Dakota Indian scholarship program by a law codified as North Dakota Century Code chapter 15-63.
2. **Program membership.** Members of the North Dakota Indian scholarship program consist of an Indian appointed by the governor, the executive director of the state Indian affairs commission, and the chancellor of higher education or the chancellor's designee. The chancellor of higher education or the chancellor's designee shall serve as chairman and the

executive director of the state Indian affairs commission shall serve as secretary of the board for Indian scholarships.

3. **Inquiries.** Inquiries regarding the program may be addressed to:

North Dakota Indian Scholarship Program  
North Dakota University System  
600 East Boulevard Avenue  
Bismarck, ND 58505

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

**General Authority:** NDCC 28-32-02.1

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

ARTICLE 42-02

NORTH DAKOTA INDIAN SCHOLARSHIP RULES

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

CHAPTER 42-02-01  
GENERAL SCHOLARSHIP POLICY

|             |                                 |
|-------------|---------------------------------|
| Section     |                                 |
| 42-02-01-01 | Indian Scholarship Basic Policy |

**42-02-01-01. Indian scholarship basic policy.** The North Dakota Indian scholarship program was established to provide scholarship awards to Indian students who qualify through an application procedure as set out by the North Dakota Indian scholarship program board. Two types of awards are available: the first is a need-based award and the second is a merit-based award. In addition, all Indian valedictorian students graduating from high school anywhere in North Dakota will be provided an automatic merit-based scholarship if they will be attending a college or university in North Dakota as full-time students.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-63-02  
**Law Implemented:** NDCC 15-63-02

**CHAPTER 42-02-02  
GENERAL PROVISIONS**

|             |                            |
|-------------|----------------------------|
| Section     |                            |
| 42-02-02-01 | Eligibility of Applicants  |
| 42-02-02-02 | Procedures for Application |
| 42-02-02-03 | Selection Process          |

**42-02-02-01. Eligibility of applicants.** In accordance with North Dakota Century Code chapter 15-63, the following factors shall be considered in the process used to determine eligibility of applicants:

1. An applicant must either be a resident of North Dakota with one-quarter degree Indian blood or an enrolled member of a tribe now resident in North Dakota. Residency for each student shall be determined by the institution that student is attending.
2. An applicant may not be considered eligible until the applicant has gained admission to any institution of higher learning or state vocational education program within North Dakota.
3. An applicant must be in financial need.
4. An applicant must show probable and continuing success as a student.
5. The scholarship funds are only available to students who are considered to be full-time students, or to part-time students who may need minimal credits to complete their degree requirements within one semester, in their course of study by the college or university they are attending.
6. Students participating in internships, student teaching, teaching assistance programs, or cooperative education programs shall be eligible for a scholarship award only if participation in that program will earn credits which require tuition and which are required for a degree.

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

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

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

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

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

North Dakota Indian Scholarship Program

North Dakota University System  
600 East Boulevard Avenue  
Bismarck, ND 58505

2. The deadline for application is the fifteenth of July of each year.
3. Along with a completed application form, all candidates shall also submit the following:
  - a. A certificate of Indian blood or verification of North Dakota tribal enrollment;
  - b. The applicant's most recent transcript (high school, college, university, or general equivalency diploma certificate); and
  - c. A budget form, completed by a financial aid officer at the institution the applicant will be attending.
4. Applicants whose financial circumstances change in the year of the awarded grant may be considered for revision of award or other budget adjustments, or both, through a special request to the scholarship board.
5. Current recipients wishing to apply for continued funding through the following academic year shall submit:
  - a. A new application form;
  - b. A current transcript; and
  - c. A new budget form completed by the financial aid office.

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

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

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

**42-02-02-03. Selection process.** All completed applications received before the application deadline will be given full and equal consideration when screening for eligibility. Candidates for scholarship will be in the following three groups:

1. **Awards for valedictorians.** The recipient of the valedictorian award must make application with the North Dakota Indian scholarship program. The award will be automatic if all criteria and the application deadline have been met.
2. **Awards for merit-based scholarship.** The recipient of the merit-based scholarship must have a cumulative grade point average of at least 3.50. Financial need is not necessarily a

factor. The award is to provide an incentive to students with high academic achievements.

3. **Awards for financial need or basic scholarship.** The recipient of the basic scholarship must show a financial need and maintain a cumulative grade point average of at least 2.00. Awards will be offered to those applicants with the highest financial need. Undergraduates will be given priority over graduate students.

Any eligible student who is not offered an award but whose grant application was received by the fifteenth of July deadline will be placed on a waiting list for funds which may become available throughout the academic year. Students on the waiting list will be ranked according to financial need, cumulative grade point average, and before late applications.

All awardees will be sent notification immediately after the completion of the selection process. A student who has been chosen to be a recipient of an award shall notify the scholarship administrator of the student's acceptance or rejection of the award. Acceptance or rejection notices must be received by the administrator within three weeks of the date on the award notification letter.

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

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

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

**CHAPTER 42-02-03  
SCHOLARSHIP AWARDS**

|             |  |
|-------------|--|
| Section     |  |
| 42-02-03-01 | Award Amounts  |
| 42-02-03-02 | Policy for a Student Who Declines an<br>Initial Offer of Scholarship Award |
| 42-02-03-03 | Disbursement Procedures  |

**42-02-03-01. Award amounts.** Criteria to be used in determining award amounts are availability of funds, total number of applicants, prevailing tuition rates, grade point averages, and financial need.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-63-02  
**Law Implemented:** NDCC 15-63-02

**42-02-03-02. Policy for a student who declines an initial offer of scholarship award.** A student who declines the initial offer of a scholarship and requests reinstatement will be considered only in the event attrition produces funds available for reawarding.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-63-02  
**Law Implemented:** NDCC 15-63-02

**42-02-03-03. Disbursement procedures.** Upon receipt of acceptance notices from the students, the North Dakota university system will process award checks according to procedures set out at colleges or universities.

The checks will be sent to the institution's financial aid office for disbursement to the students, with which students are expected to pay their normal education expenses. Recipients may apply the awards toward the cost of registration, health, activities, room and board, books, and other necessary items.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-63-02  
**Law Implemented:** NDCC 15-63-02, 15-63-05

**CHAPTER 42-02-04  
POLICY REQUIREMENTS**

|             |   |
|-------------|---|
| Section     |   |
| 42-02-04-01 | Policy for Satisfactory Progress                                      |
| 42-02-04-02 | Policy for Students Who Delay or Interrupt<br>Their Academic Programs |
| 42-02-04-03 | Policy for Refunds and Repayments                                     |

**42-02-04-01. Policy for satisfactory progress.** The North Dakota Indian scholarship program requires the student to maintain a minimum cumulative grade point average of 2.00 or above for renewal.

In order to renew a merit-based scholarship, a recipient must maintain a 3.50 cumulative grade point average.

All recipients must maintain full-time status, or part-time status if minimal credits are needed to complete their degree requirements within one semester, as defined in their programs of study.

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

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

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

**42-02-04-02. Policy for students who delay or interrupt their academic programs.** Students who accept and use a scholarship and who subsequently interrupt their academic programs may petition the board for reinstatement.

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

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

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

**42-02-04-03. Policy for refunds and repayments.** A student who withdraws after having received an advance on the student's scholarship shall have any refunds or repayments due the scholarship program determined by the stated refund or repayment policy of the campus the student is attending.

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

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

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

CHAPTER 42-02-05  
APPEALS PROCESS

Section  
42-02-05-01 Appeals Process

**42-02-05-01. Appeals process.** Any student who has been denied funding or who has lost funding may appeal to the board. In this case the student must submit, in writing, a description and explanation of the circumstances involved and a summary of the student's concerns, along with any supporting documentation.

The appeal should be addressed to the scholarship board:

North Dakota Indian Scholarship Program  
North Dakota University System  
600 East Boulevard Avenue  
Bismarck, ND 58505

The board shall consider the appeal and will contact the student regarding its decision within two weeks after the board renders a decision.

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

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

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



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



JANUARY 2000

CHAPTER 45-02-02

45-02-02-02. Applications for licenses.

1. Resident agents' applications.

- a. An application must be completed in accordance with the instruction sheet and submitted on ~~the---insurance~~ department's a commissioner-approved application form.
- b. ~~An application may be submitted prior or subsequent to the applicant's testing date.~~
- e. An application for an agent's license by a partnership must be accompanied by a ~~certified~~ copy of the agreement.
- d. c. An application for an agent's license by a corporation must be accompanied by a ~~certified~~ copy of the articles of incorporation.
- e. d. An applicant who is licensed as a nonresident agent in this state and seeks to be licensed as a resident agent must provide, with the application, a letter of clearance from the state in which the agent is currently or was most recently licensed as a resident agent. Additionally, the agent must have that state indicate whether the agent was so licensed within the preceding twelve months.
- f. e. An application for a corporate or partnership agent's license must be completed on ~~the---department~~ a commissioner-approved form.

- g= f. A new application form is not required to add a new company unless adding an additional ~~major-category~~ line of insurance.
- h= g. Every application must be accompanied by the appropriate fee.

**2. Nonresident agents' applications.**

- a. An application for a nonresident agent's license must comply with subdivisions a, b, c, d, ~~f~~ e, and ~~h~~ g of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that agent's true and lawful attorney for purposes of service of process.
- b. An applicant for a nonresident agent's license must have the state, which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is licensed and eligible to write in that state.
- c. A new application form is not required to add a new company unless adding an additional ~~major-category~~ line of insurance.

**3. Resident and nonresident brokers' applications.**

- a. An application must be completed in accordance with the instruction sheet provided by the department and submitted on ~~the--appropriate~~ a commissioner-approved application form.
- b. A broker's application must be accompanied by written proof of compliance with the requirement that the broker have in force a bond in the penal sum of five thousand dollars and the appropriate fee.
- c. An application for a broker's license may not be submitted unless the applicant is currently licensed in this state as an agent and has had two years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm during the three years immediately next preceding the date of application.
- d. A broker's application must be accompanied by a certificate of an errors and omissions policy in an amount not less than five hundred thousand dollars.

- 4. Surplus lines brokers' applications.** A surplus lines insurance broker's application must be submitted in accordance with chapter 45-09-01.

**5. Consultants' applications.**

- a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
- b. No person, firm, corporation, or partnership holding a license as an agent, broker, or surplus lines broker, or ~~limited insurance representative~~ may obtain and simultaneously hold a license as a consultant. If the applicant holds such licenses at the time of application, the licenses must be terminated prior to obtaining a consultant's license.
- c. No person may apply for a consultant's license unless the applicant has had not less than five years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm, within the ten years immediately next preceding the date of application in the area of insurance in which the applicant intends to consult.
- d. An application may be submitted prior or subsequent to the applicant's testing date and must be accompanied by the appropriate fee.

**6. ~~Limited insurance representatives' applications.~~**

- ~~a. An application for a limited insurance representative must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.~~
- ~~b. The applicant must clearly indicate in writing the specific area of insurance in which the applicant intends to conduct business and which must be exempt from the examination requirement.~~

**7. Temporary license applications.**

- a. An application for a temporary insurance agent's or broker's license must be submitted in accordance with subdivisions a, b, c, d, e, and h g of subsection 1, subsection 2, and subsection 3 and be accompanied by the appropriate fee.
- b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
- c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the agents'

examination and desires to be licensed until such time as a passing examination score is obtained.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; April 1, 1996; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-12, 26.1-26-13

**45-02-02-03. Examination for licensure.**

1. An applicant must take the examination authorized and required by the department of insurance.
2. The examination is administered ~~by the educational testing service through its multistate insurance licensing program~~ under a contract with a testing service.
3. The examination may be taken prior or subsequent to the date an application for the license is submitted to the department at a designated time and location on a preregistration or walk-in basis, and in compliance with all procedures required by the test administrator.
4. An applicant must present a photo identification card at the test center prior to being admitted for testing. If the applicant does not have a photo identification card, permission to take the test may be specially obtained upon application to the insurance department.
5. There are two basic parts to each examination:
  - a. Part One is the part of the test developed as a test of general knowledge for the ~~major categories~~ lines of insurance and there are four such part ones:
    - (1) 01 Life and annuity
    - (2) 02 Accident and health
    - (3) 03 Property ~~{fire}~~
    - (4) 04 Casualty
  - b. Part Two is the part of each test which examines the applicant's knowledge of North Dakota law.
6. ~~For an~~ An applicant to be qualified applying to conduct the business of insurance in the following lines; ~~the applicant must take and pass the test listed immediately after it in the separate column:~~ following tests:
  - a. ~~Life insurance and~~ ----- 01 Life

annuity-contracts

- b.--Sickness,-accident-----02-Accident-and-health  
and-health
- c.--Credit-life-insurance-----01-Life-and  
and-credit-accident-----02-Accident-and-health  
and-health-insurance
- d.--Fire-and-allied-lines-----03-Property
- e.--Vehicle-liability-and-----04-Casualty  
vehicle-damage-insurance
- f.--Comprehensive-personal-----04-Casualty  
and-general-liability  
coverage
- g.--Marine-and-transportation---03-Property
- h.--Credit-and-mortgage-----03-Property  
guarantee-insurance
- i.--Burglary-and-theft-----04-Casualty  
insurance
- j.--Crop-insurance-----03-Property
- k.--Bail-bonds-----04-Casualty
- l.--Fidelity-and-surety-----04-Casualty  
insurance
- m.--Homeowners'-and-----03-Property-and  
farmowners'-multiple-----04-Casualty  
peril-insurance
- n.--Commercial-multiple-----03-Property-and  
peril-insurance-----04-Casualty
- o.--Property-and-casualty-----03-Property-and  
insurance-sold-in-----04-Casualty  
connection-with-a  
credit-transaction
- p.--Industrial-fire-----03-Property
- q.--Legal-expense-insurance-----02-Accident-and-health-or  
04-Casualty
- r.--Variable-annuities-and-----01-Life  
variable-life-insurance

s:--Title-insurance-----Exempt

- a. Life and annuity 01 Life and annuity
- b. Accident and health 02 Accident and health
- c. Property 03 Property
- d. Casualty 04 Casualty
- e. Variable life and annuity 01 Life and annuity

- 7. An examination is valid for as long as a person continuously holds a valid agent's or broker's license issued by the North Dakota department of insurance and for twelve months following expiration of a license, with the exception that an examination ceases to be valid immediately upon the suspension or revocation of the license unless the order of suspension or revocation specifies otherwise.
- 8. Licensure tests for consultants.
  - a. An applicant for a consultant license must take and pass the agent's examination for the ~~major-categories~~ lines in which the applicant wishes to consult.
  - b. The applicant must comply with all provisions of this chapter regarding testing for an agent's license.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-12, 26.1-14, 26.1-23, 26.1-24, 26.1-27, 26.1-28, 26.1-29

**45-02-02-04. Exceptions to examination requirement.**

- 1. Chartered life underwriter and chartered property/casualty underwriters designations.
  - a. Holders of the designation of chartered life underwriter need take only Part Two of the licensure test in order to be qualified in the life and annuity line of insurance category and the lines listed at subdivisions a, e, and f of subsection 6 of section 45-02-02-03 products listed within this line.
  - b. Holders of the designation of chartered property/casualty underwriters need take only Part Two of the licensure test in order to be qualified to transact business in the accident and health, property, and casualty ~~categories and~~

~~lines--listed--at--subdivisions--b,--d--through--q,--and--s--of  
subsection-6-of-section-45-02-02-03~~ lines of insurance.

2. If an applicant previously held a like license in another state with which North Dakota has reciprocal agreements within twelve months prior to the application for license of this state, the applicant need take only Part Two of the licensure test covering North Dakota law and administrative rules.
3. Consultants' exemption.
  - a. If an applicant holds a chartered life underwriter or chartered property/casualty underwriters designation, the exemptions in subsection 1 ~~of-section-45-02-02-04~~ apply.
  - b. Subsection 2 applies to consultant examinations.
  - c. If an applicant holds an agent's or broker's license in North Dakota, the applicant is exempt from the testing requirements; however, the applicant must terminate all other licenses prior to obtaining a consultant's license.
  - d. Upon application, it may be shown that the educational background or work experience record ~~are~~ is an adequate basis to grant an exemption from testing. A narrative must be included with the application.
4. An applicant applying for a license for title insurance is exempt from any examination requirement but must meet the following qualifications:
  - a. The applicant must be a licensed abstractor or attorney; or
  - b. The applicant must have a minimum of eighty hours of training provided by the appointing insurer. A certification by the appointing insurer that the training has been completed must accompany the application.
5. An applicant for a license to write the following products is exempt from examination requirements:
  - a. Baggage insurance sold by a ticket-selling agent of a common carrier for travel with that carrier.
  - b. Travel insurance sold by a ticket-selling agent operating within a transportation terminal.
6. An applicant for a license to write the following products need only take the reduced examination for that specific product:
  - a. Bail bonds.

b. Credit life or credit life and disability.

c. Crop or crop hail.

d. Legal expense.

e. Prepaid legal service.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-25

**45-02-02-05. Effective date of license - New line - New company appointment - Renewals.**

1.--Resident-agent Agent.

a: 1. An applicant who has filed a completed application for a resident an agent's license with the department of insurance may first transact business under that license effective the date the applicant's application is stamped approved by the insurance department.

b:--An--applicant--who--passes--the--examination--prior--to--the--filing--of--a--completed--application--with--the--department--may--first--transact--business--effective--the--date--the--company,--through--which--the--license---is---issued,---signed---the--appointment:--The--company--is--responsible--for--notifying--the--agent--of--the--appointment--date--and--mailing--the--completed--application--to--the--department--on--that--appointment--date:

e: 2. An agent who is adding a new line of insurance may first transact business in that new line effective the same date as the effective date if the agent were was obtaining a new license under the--provisions--of--subdivision--a--or--b subsection 1.

d:--An--agent--who--is--adding--a--new--company--may--first--transact--business--under--that--new--appointment--effective--the--date--of--that--appointment:--An--appointment--form--must--be--mailed--to--the--department--on--the--day--the--appointment--is--signed:

2.--Nonresident-agent:

a:--An--applicant--who--has--filed--a--completed--application--for--a--nonresident--license--with--the--department--may--first--transact--business--under--the--license--when--the--license--is--physically--in--the--possession--of--that--applicant:

b:--A--nonresident--agent--who--is--adding--a--new--line--of--insurance--may--first--transact--business--in--that--new--line--effective--the

date--the--license--with--the--new--line--added--is--physically--in--the--possession--of--the--agent.

e. --A--nonresident--agent--who--is--licensed--for--the--appropriate--category--of--insurance--and--who--is--adding--a--new--company--may--first--transact--business--under--that--new--appointment--effective--the--date--of--that--appointment. --An--appointment--form--must--be--mailed--on--the--day--the--appointment--is--signed.

3. --A--person--obtaining--a--broker,--surplus--lines--broker,--limited--representative,--temporary,--or--consultant--license--may--first--transact--business--under--that--license--effective--the--date--the--license--is--physically--in--the--possession--of--that--person.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-32

#### **45-02-02-06. Appointment procedure - Terminations.**

1. The appointment of an agent who is a new agent shall be contained in the application form submitted to the department of insurance to obtain that new license.
2. The appointment of an agent licensed for a new major category line of insurance shall be contained in the application form submitted to the department.
3. The appointment of an agent when the agent is already licensed for the appropriate major categories and lines of insurance is accomplished through an agreement or contract between the company and the agent. A new application form is not required with such an appointment. However, for that appointment to become effective the company must provide notice of the appointment to the department on the appropriate appointment form and also provide with that form the required fee. The form must include the following statement: The appointing company assumes full and complete responsibility for the acts of this agent without regard to any technical distinction between this relationship and that which exists in law between "principal and agent" until the appointment process has been completed and is limited to the relationship among the proposed insured, the agent, and the appointing company. Such appointment form must be signed by the appointing company representative and mailed to the department on the date the letter is signed.
4. If a company desires to limit the appointment to specified categories or lines of insurance or insurance product types, such limitation must be clearly set out in the applications or appointment forms.

5. The fees for all appointments shall be submitted with the appointment forms.
6. Notice of termination of all appointments shall be provided by the company to the department only on an annual basis and only by lining out the agent on the renewal list, on or before May first of each year unless the agent was terminated for any of the grounds listed in North Dakota Century Code section 26.1-26-42, in which case notification shall be submitted immediately. Such immediate notice shall specify the grounds for the termination. The company is responsible for notifying the agent of the termination.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-31, 26.1-26-32

**45-02-02-11. Agents selling variable life and annuity contracts.**  
~~All applicants~~ In addition to the requirements set forth in section 45-02-02-03, an applicant for a license to do business in the line of insurance set out in subdivision r of subsection 6 of section 45-02-02-03; variable life and annuity line must first become licensed as a securities salesman under North Dakota law and provide a copy of their North Dakota securities license or a verification letter from the securities commissioner.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-11

**45-02-02-12. Administrative terminations.**

1. An agent or a limited insurance representative may terminate one's North Dakota insurance license voluntarily and have a letter of clearance issued by filing a written request with the department.
2. The agent or limited insurance representative must return the licenses to the department.
3. The agent is responsible for notifying the appointing companies of the termination.
4. A broker, surplus lines broker, or consultant license may be terminated administratively and a letter of clearance issued upon receipt of a written request by the department from the licenseholder.

5. A broker's license will be automatically terminated administratively, if the underlying agent's license is terminated.

**History:** Effective September 1, 1983; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-31

## CHAPTER 45-02-04

### 45-02-04-03. General rules.

1. **Course requirements.** The continuing education course requirements include an educational presentation involving insurance fundamentals, policies, laws, risk management, or other courses which are offered in a process of instruction approved by the commissioner as expanding skills and developing knowledge to better serve the insurance buying public.
2. **Nonapproved courses.** The following course content will not qualify for continuing education credit:
  - a. Prelicensure training.
  - b. Prospecting.
  - c. Recruiting.
  - d. Sales skills and promotions.
  - e. Motivation.
  - f. Psychology.
  - g. Communication skills.
  - h. Supportive office and machine skills.
  - i. Personnel management.

The above listing does not limit the commissioner's authority to disapprove any application which fails to meet the standards for course approval.

3. **Prelicensure course.** A prelicensure course means a classroom program consisting of at least eight credit hours, per line of insurance, with course content including:
  - a. For property or casualty insurance, or both:
    - (1) North Dakota laws, rules, and regulations relating to property and casualty insurance;
    - (2) Insurance and insurance-related concepts;
    - (3) Policy provisions;
    - (4) Types of policies;

- (5) Perils, exclusions, deductibles, and liability;
  - (6) Prospecting and evaluating needs;
  - (7) Serving clients; and
  - (8) Presentation and acceptance of the policy.
- b. For life and annuity or accident and health insurance, or both:
- (1) North Dakota laws, rules, and regulations relating to life and annuity or accident and health insurance;
  - (2) Types of policies and coverages;
  - (3) Policy provisions, options, and benefits;
  - (4) Completing the application and delivering the policy;
  - (5) Taxes, retirement, and other insurance concepts;
  - (6) Group insurance; and
  - (7) Other provisions affecting insurance benefits.
4. **License applicant responsibility.** All license applicants shall present to the proctor, prior to sitting for insurance licensing examinations, a valid copy of the prelicensure report of compliance.
5. **Licensee responsibility.** Each licensee shall be responsible for maintaining original records of the licensee's continuing education certificates of attendance for a period of one year from the last reporting deadline. Such records shall be made available to the commissioner upon request.
6. **Licensee seeking additional lines.** Effective January 1, 1986, prelicensure education will be required of a current resident agent, broker, or consultant seeking authority in a line of insurance for which he or she is not currently licensed.
7. **Correspondence course credit.** Credit received by an agent for a correspondence course must be based on successful completion of the course as prescribed by the sponsor and approved by the insurance commissioner.
8. **Reciprocity.** The commissioner may approve credit for insurance-related courses approved by the North Dakota real estate commission and the North Dakota state bar association for continuing education purposes.

9. **Credit hour.** A credit hour means sixty minutes of time, of which at least fifty minutes must be instruction, with a maximum of ten minutes break.
  - a. Credit hours for insurance education will not be approved in increments of less than one-half hour.
  - b. Neither students nor instructors may earn credit for attending or instructing at any subsequent offering of a continuing education course more than once during a reporting period.
10. **Course audit.** The commissioner or an authorized representative reserves the right to audit insurance education offerings with or without notice to the sponsor.
11. **National insurance education independent study.** A licensee who passes a national examination by way of independent study may receive up to fifteen hours of continuing education credit, of which seven and one-half hours will be considered as classroom.
12. **Class attendance.**
  - a. No certificate of attendance will be issued to a continuing education participant who is absent for more than ten percent of the classroom hours.
  - b. Prelicensure courses must be attended in their entirety.
13. **Examinations.** Course examinations will not be required for insurance education courses, unless required by the sponsor.
14. **Textbooks.** Textbooks are not required for continuing education courses. All course materials must contain accurate and current information relating to the subject matter being taught.
15. **Approval of course offerings.** The commissioner of insurance requires sponsors of insurance education courses to provide the following:
  - a. To the commissioner on a commissioner-approved form prior to course offerings:
    - (1) An application for course approval of an insurance education course {10920}--(in---duplicate)---ninety fifteen business days prior to course offering.
    - (2) A complete course outline designating individual topics and the amount of time devoted to each area being taught. (NOTE: Prelicensure course outlines must include a copy of all textbooks, handouts, etc.,

excluding Pictorial, R & R Newkirk, and Educational Training Systems, Inc., which are on file at the insurance department).

- (3) An application for coordinator approval (10921)-(in duplicate).
  - (4) An application for instructor approval (10921)-(in duplicate).
  - (5) A fifty dollar per course filing fee.
- b. A class roster (10922) to the commissioner on a commissioner-approved form fifteen days subsequent to completion of all insurance education course courses. This requirement may be waived for nationally designated independent study courses.
- c. To course participants subsequent to course offerings:
- (1) A course attendance certificate (10923) and a summary report of compliance (10924) to all students successfully completing an approved continuing education course.
  - (2) A prelicensure report of compliance (10925) to all students successfully completing an approved prelicensure course.

Upon review by the commissioner, sponsors will receive a copy of the course application indicating approval or denial, credit hours assigned, and a course certification number. Course certification numbers must be used on all insurance education certificates, correspondence, and advertisements.

16. **Sponsor management responsibility.** Sponsors of insurance education courses are responsible for the actions of their respective instructors and coordinators.
17. **Course approval "after the fact".** Credit may be granted for a course "after the fact" provided such courses are properly submitted and approved by the commissioner. Subsequent approval depends on course content and is not automatic or guaranteed.
18. **Advertising.** Courses may not be advertised in any manner unless approval has been granted, in writing, by the commissioner.
  - a. All advertising relating to approved course offerings shall contain the following statement: "This course has been approved by the insurance commissioner of insurance for (insert hours) of insurance education credit."

- b. Advertising must be truthful, clear, and not deceptive or misleading.
19. **Approval of subsequent offerings.** After approval has been granted for the initial offering of a course, approval for subsequent offerings will be granted without the necessity of a new application if a "notice of subsequent offering" is filed with the commissioner at least fifteen days before the date the course is to be held.
  20. **Fees.** Fees for courses must be reasonable and clearly identifiable to students. If a course is canceled for any reason, all fees must be returned within thirty days of cancellation.
  21. **Adequate facility.** Each course of study must be conducted in a classroom or other facility which will adequately and comfortably accommodate the faculty and the number of students enrolled. The sponsor may limit the number of students enrolled in a course.

**History:** Effective July 1, 1986; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-49

**45-02-04-09. Licensee report of compliance.** Reports of compliance for continuing education credit must be submitted with a fee of twenty-five dollars at the end of each two-year period following licensure, except as provided below. All licensed agents shall submit a compliance report and fee based on the following schedule. Licensed agents with surnames beginning with:

1. A-K shall report thirty hours or more of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.
2. L-Z shall report thirty hours or more of approved coursework for the previous two years within thirty days of January first of every even-numbered year.
3. A newly licensed agent shall have the remainder of the calendar year in which initially licensed as a grace period. Beginning January first of the next calendar year, newly licensed agents must comply with continuing education requirements, reporting the required continuing education credits for each calendar year according to the alphabetized schedule.
4. Agents An agent licensed exclusively for the sale of title insurance, baggage insurance, fidelity, surety bonds, bail bonds, or legal expense insurance, including prepaid legal services sales-representatives, are group credit life, or

group credit accident and health to cover an indebtedness is exempt from continuing education requirements.

**History:** Effective July 1, 1986; amended effective November 1, 1990; May 1, 1997; October 1, 1997; January 1, 2000.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-31.1(1), 26.1-26-31.1(2), 26.1-26-31.4

## CHAPTER 45-03-15

**45-03-15-01. Accounting practices and procedures.** Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the 1999 version of the national association of insurance commissioners accounting practices and procedures manuals manual for property and casualty and life and health insurance adopted December 1998.

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

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

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

**45-03-15-02. Reporting of financial information.** Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the 1999 version of the national association of insurance commissioners accounting practices and procedures manuals manual for property and casualty and life and health insurance adopted December 1998. The commissioner may exempt any company or category or class of companies from the filing requirement.

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

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

**Law Implemented:** NDCC 26.1-02-03, 26.1-03-07, 26.1-03-11.1

**STAFF COMMENT:** Chapter 45-04-12 contains all new material and is not underscored so as to improve readability.

**CHAPTER 45-04-12  
VALUATION OF LIFE INSURANCE POLICIES**

|             |   |
|-------------|---|
| Section     |   |
| 45-04-12-01 | Applicability   |
| 45-04-12-02 | Definitions   |
| 45-04-12-03 | General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves   |
| 45-04-12-04 | Calculation of Minimum Valuation Standard for Policies With Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits, Other Than Universal Life Policies  |
| 45-04-12-05 | Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy Owner to Keep a Policy in Force Over a Secondary Guarantee Period |

**45-04-12-01. Applicability.** This chapter shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2000, subject to the following exceptions and conditions:

**1. Exceptions.**

- a. This chapter shall not apply to any individual life insurance policy issued on or after January 1, 2000, if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount issued before January 1, 2000, which guarantees the premium rates of the new policy. This chapter also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.
- b. This chapter shall not apply to any universal life policy that meets all the following requirements:
  - (1) Secondary guarantee period, if any, is five years or less;
  - (2) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in subsection 6 of section 45-04-12-02 and the applicable valuation interest rate; and

- (3) The initial surrender charge is not less than one hundred percent of the first year annualized specified premium for the secondary guarantee period.
- c. This chapter shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
- d. This chapter shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
- e. This chapter shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

## 2. Conditions.

- a. Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, or both, shall be in accordance with the provisions of section 45-04-12-04.
- b. Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period, shall be in accordance with the provisions of section 45-04-12-05.

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

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

**Law Implemented:** NDCC 26.1-35

### **45-04-12-02. Definitions.** For purposes of this chapter:

1. "Basic reserves" means reserves calculated in accordance with North Dakota Century Code section 26.1-35-05.
2. "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment, from policy inception for the first segment, to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables or any other valuation mortality table adopted by the national association of insurance commissioners after January 1, 2000, and

promulgated by rule by the commissioner for this purpose, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in subsection 2 of section 45-04-12-03.

The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$ , if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy, where  $G_t$  and  $R_t$  are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t$  = 1, 2, ...;  $t$  is reset to 1 at the beginning of each segment; and

$GP_{x+k+t-1}$  = Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$ , however,  $R_t$  may be increased or decreased by one percent in any policy year, at the company's option, but  $R_t$  shall not be less than one;

where:

$x$ ,  $k$ , and  $t$  are as defined above, and

$q_{x+k+t-1}$  = Valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of subdivision b of subsection 2 of section 45-04-12-03 if subdivision c of subsection 2 of section 45-04-12-03 is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be deemed to be 0.

3. "Deficiency reserves" means the excess, if greater than zero, of:

- a. Minimum reserves calculated in accordance with North Dakota Century Code section 26.1-35-09.
  - b. Basic reserves.
4. "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.
  5. "Maximum valuation interest rates" means the interest rates defined in North Dakota Century Code section 26.1-35-04, computation of minimum standard by calendar year of issue, which are to be used in determining the minimum standard for the valuation of life insurance policies.
  6. "1980 CSO valuation tables" means the commissioners' 1980 standard ordinary mortality table (1980 CSO table) without ten-year selection factors, incorporated into the 1980 amendments to the national association of insurance commissioners standard valuation law, and variations of the 1980 CSO table approved by the national association of insurance commissioners, such as the smoker and nonsmoker versions approved in December 1983.
  7. "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in subdivision c of subsection 1 of section 45-04-12-05, if any, or else the minimum premium described in subdivision d of subsection 1 of section 45-04-12-05.
  8. a. "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, when the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:
    - (1) The present value of the death benefits within the segment; plus
    - (2) The present value of any unusual guaranteed cash value (see subsection 4 of section 45-04-12-04) occurring at the end of the segment; less
    - (3) Any unusual guaranteed cash value occurring at the start of the segment; plus

- (4) For the first segment only, the excess of subparagraph a over subparagraph b, as follows:
    - (a) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
    - (b) A net one-year term premium for the benefits provided for in the first policy year.
  - b. The length of each segment is determined by the contract segmentation method, as defined in this section.
  - c. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.
  - d. For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.
9. "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.
  10. "Ten-year select factors" means the select factors adopted with the 1980 amendments to the national association of insurance commissioners standard valuation law.
  11. a. "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, when:
    - (1) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and
    - (2) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, when the uniform percentage is such that, at issue, the

present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of subparagraph a over subparagraph b, as follows:

- (a) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
  - (b) A net one-year term premium for the benefits provided for in the first policy year.
- b. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.
12. "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality or expense charges are made to the policy.

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

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

**Law Implemented:** NDCC 26.1-35

**45-04-12-03. General calculation requirements for basic reserves and premium deficiency reserves.**

1. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the national association of insurance commissioners after January 1, 2000, and promulgated by rule by the commissioner for this purpose. If select mortality factors are elected, they may be:

- a. The ten-year select mortality factors incorporated into the 1980 amendments to the national association of insurance commissioners standard valuation law;
  - b. The select mortality factors in the appendix; or
  - c. Any other table of select mortality factors adopted by the national association of insurance commissioners after January 1, 2000, and promulgated by rule by the commissioner for the purpose of calculating basic reserves.
2. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the national association of insurance commissioners after January 1, 2000, and promulgated by rule by the commissioner. If select mortality factors are elected, they may be:
- a. The ten-year select mortality factors incorporated into the 1980 amendments to the national association of insurance commissioners standard valuation law;
  - b. The select mortality factors in the appendix of this chapter;
  - c. For durations in the first segment, X percent of the select mortality factors in the appendix, subject to the following:
    - (1) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
    - (2) X shall not be less than twenty percent;
    - (3) X shall not decrease in any successive policy years;
    - (4) X is such that, when using the valuation interest rate used for basic reserves, subparagraph a is greater than or equal to subparagraph b:
      - (a) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

- (b) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
  - (5) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five years after the valuation date;
  - (6) The appointed actuary shall increase X at any valuation date when it is necessary to continue to meet all the requirements of subdivision c of subsection 2;
  - (7) The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of subdivision c of subsection 2;
  - (8) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums; and
  - (9) If X is less than one hundred percent at any duration for any policy, the following requirements shall be met:
    - (a) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of chapter 45-03-19; and
    - (b) The appointed actuary shall annually opine for all policies subject to this rule as to whether the mortality rates resulting from the application of X meet the requirements of subdivision c of subsection 2. This opinion shall be supported by an actuarial report, subject to appropriate actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.
- d. Any other table of select mortality factors adopted by the national association of insurance commissioners after January 1, 2000, and promulgated by rule by the

commissioner for the purpose of calculating deficiency reserves.

3. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the national association of insurance commissioners standard valuation law may be used thereafter through the tenth policy year from the date of issue.
4. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used when the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.
5. Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following:
  - a. Reserves calculated ignoring the guarantee;
  - b. Reserves assuming the guarantee was made at issue; and
  - c. Reserves assuming that the policy was issued on the date of the guarantee.
6. The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including policies issued prior to January 1, 2000. This documentation may include a demonstration of the extent to which aggregation with other nonspecified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of chapter 45-03-19.

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

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

**Law Implemented:** NDCC 26.1-35

**45-04-12-04.** Calculation of minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies.

1. Basic reserves. Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in subdivision a or b may be made:
  - a. Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.
  - b. Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.
2. Deficiency reserves.
  - a. The deficiency reserve at any duration shall be calculated:
    - (1) On a unitary basis if the corresponding basic reserve determined by subsection 1 is unitary;
    - (2) On a segmented basis if the corresponding basic reserve determined by subsection 1 is segmented; or
    - (3) On the segmented basis if the corresponding basic reserve determined by subsection 1 is equal to both the segmented reserve and the unitary reserve.
  - b. This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality, specified in subsection 2 of section 45-04-12-03, and rate of interest.
  - c. Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in subsection 2 of section 45-04-12-03.
  - d. For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

3. Minimum value. Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to date, if later, but not beyond the next policy anniversary, if midterminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the national association of insurance commissioners standard valuation law. In no case may total reserves, including basic reserves, deficiency reserves, and any reserves held for supplemental benefits that would expire upon contract termination, be less than the amount that the policy owner would receive, including the cash surrender value of the supplemental benefits, if any, referred to above, exclusive of any deduction for policy loans, upon termination of the policy.
4. Unusual pattern of guaranteed cash surrender values.
  - a. For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, when n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.
  - b. The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, when:
    - (1) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
      - (a) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
      - (b) The mandatory expiration date of the policy;

- (2) The net premium for a given year during the n-year period is equal to the product of the net to gross ratio and the respective gross premium; and
  - (3) The net to gross ratio is equal to subparagraph a divided by subparagraph b as follows:
    - (a) The present value, at the beginning of the n year period, of death benefits payable during the n-year period plus the present value, at the beginning of the n-year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n-year period.
    - (b) The present value, at the beginning of the n-year period, of the scheduled gross premiums payable during the n-year period.
- c. For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
- (1) One hundred ten percent of the scheduled gross premium for that year;
  - (2) One hundred ten percent of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
  - (3) Five percent of the first policy year surrender charge, if any.
5. Optional exemption for yearly renewable term reinsurance. At the option of the company, the following approach for reserves on yearly renewable term reinsurance may be used:
- a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
  - b. Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as determined under subsection 3.
  - c. Deficiency reserves.

- (1) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
  - (2) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with paragraph 1.
- d. For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the national association of insurance commissioners and promulgated by rule by the commissioner for this purpose.
  - e. A reinsurance agreement shall be considered yearly renewable term reinsurance for purposes of this subsection if only the mortality risk is reinsured.
  - f. If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.
6. Optional exemption for attained-age-based yearly renewable term life insurance policies. At the option of the company, the following approach for reserves for attained-age-based yearly renewable term life insurance policies may be used:
- a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
  - b. Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in paragraph 3 of subdivision f.
  - c. Deficiency reserves.
    - (1) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
    - (2) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with paragraph 1.
  - d. For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the

national association of insurance commissioners and promulgated by rule by the commissioner for this purpose.

- e. A policy shall be considered an attained-age-based yearly renewable term life insurance policy for purposes of this subsection if:
    - (1) The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and
    - (2) The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance, and attained age.
  - f. For policies that become attained-age-based yearly renewable term policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:
    - (1) The initial period is constant for all insureds of the same sex, risk class, and plan of insurance; or
    - (2) The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and
    - (3) After the initial period of coverage, the policy meets the conditions of subdivision e.
  - g. If this election is made, this approach shall be applied in determining reserves for all attained-age-based yearly renewable term life insurance policies issued on or after January 1, 2000.
7. Exemption from unitary reserves for certain n-year renewable term life insurance policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:
- a. The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten years and less than twice the size of the earlier n-year periods, and for each period, the premium

rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

- b. The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO valuation table with or without the ten-year select mortality factors; and
  - c. There are no cash surrender values in any policy year.
8. Exemption from unitary reserves for certain juvenile policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:
- a. At issue, the insured is age twenty-four or younger;
  - b. Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five, the gross premiums and death benefits are level, and there are no cash surrender values; and
  - c. After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

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

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

**Law Implemented:** NDCC 26.1-35

**45-04-12-05. Calculation of minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policy owner to keep a policy in force over a secondary guarantee period.**

1. General.

a. Policies with a secondary guarantee include:

- (1) A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;
- (2) A policy in which the minimum premium at any duration is less than the corresponding one-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the national association of insurance commissioners and

promulgated by rule by the commissioner for this purpose; or

- (3) A policy with any combination of paragraphs 1 and 2.
  - b. A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in subsections 2 and 3 shall be recalculated from issue to reflect these changes.
  - c. Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.
  - d. For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors, including mortality charges, loads, and expense charges, and the interest crediting rate, which are all guaranteed at issue.
  - e. The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in subdivisions b, c, and d of subsection 2 of section 45-04-12-03 may not be used to calculate the one-year valuation premiums.
  - f. The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.
2. Basic reserves for the secondary guarantees. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise

to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in subsection 2 of section 45-04-12-02.

3. Deficiency reserves for the secondary guarantees. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in subsection 2 of section 45-04-12-04 with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.
4. Minimum reserves. The minimum reserves during the secondary guarantee period are the greater of:
  - a. The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
  - b. The minimum reserves required by other rules or rules governing universal life plans.

**History:** Effective January 1, 2000.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 26.1-35

## SELECT MORTALITY FACTORS

This appendix contains tables of select mortality factors that are the bases to which the respective percentage of subdivision b of subsection 1 of section 45-04-12-03 and subdivisions b and c of subsection 2 of section 45-04-12-03 are applied.

The six tables of select mortality factors contained herein include: (1) male aggregate, (2) male nonsmoker, (3) male smoker, (4) female aggregate, (5) female nonsmoker, and (6) female smoker.

These tables apply to both age last birthday and age nearest birthday mortality tables.

For sex-blended mortality tables, compute select mortality factors in the same proportion as the underlying mortality. For example, for the 1980 CSO-B table, the calculated select mortality factors are eighty percent of the appropriate male table in this appendix, plus twenty percent of the appropriate female table in this appendix.

Appendix

SELECT MORTALITY FACTORS

| Issue<br>Age | Male, Aggregate<br>Duration |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
|--------------|-----------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|              | 1                           | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
| 0-15         | 100                         | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 16           | 100                         | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 17           | 100                         | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 18           | 96                          | 98  | 98  | 99  | 99  | 100 | 100 | 90  | 92  | 92  | 92  | 92  | 93  | 93  | 96  | 97  | 98  | 98  | 99  | 100 |
| 19           | 83                          | 84  | 84  | 87  | 87  | 87  | 79  | 79  | 79  | 81  | 81  | 82  | 82  | 82  | 85  | 88  | 91  | 94  | 97  | 100 |
| 20           | 69                          | 71  | 71  | 74  | 74  | 69  | 69  | 67  | 69  | 70  | 71  | 71  | 71  | 71  | 74  | 79  | 84  | 90  | 95  | 100 |
| 21           | 66                          | 68  | 69  | 71  | 66  | 66  | 67  | 66  | 67  | 70  | 70  | 70  | 71  | 71  | 77  | 83  | 88  | 94  | 100 | 100 |
| 22           | 65                          | 66  | 66  | 63  | 63  | 64  | 64  | 64  | 65  | 68  | 68  | 68  | 68  | 69  | 71  | 77  | 83  | 88  | 94  | 100 |
| 23           | 62                          | 63  | 59  | 60  | 62  | 62  | 63  | 63  | 64  | 65  | 65  | 67  | 67  | 69  | 70  | 76  | 82  | 88  | 94  | 100 |
| 24           | 60                          | 56  | 56  | 59  | 59  | 60  | 61  | 61  | 61  | 64  | 64  | 64  | 66  | 67  | 70  | 76  | 82  | 88  | 94  | 100 |
| 25           | 52                          | 53  | 55  | 56  | 58  | 58  | 60  | 60  | 60  | 63  | 62  | 63  | 64  | 67  | 69  | 75  | 81  | 88  | 94  | 100 |
| 26           | 51                          | 52  | 55  | 56  | 58  | 58  | 57  | 61  | 61  | 62  | 63  | 64  | 66  | 69  | 66  | 73  | 80  | 86  | 93  | 100 |
| 27           | 51                          | 52  | 55  | 57  | 58  | 60  | 61  | 61  | 60  | 63  | 63  | 64  | 67  | 66  | 67  | 74  | 80  | 87  | 93  | 100 |
| 28           | 49                          | 51  | 56  | 58  | 60  | 60  | 61  | 62  | 62  | 63  | 64  | 66  | 65  | 66  | 68  | 74  | 81  | 87  | 94  | 100 |
| 29           | 49                          | 51  | 56  | 58  | 60  | 61  | 62  | 62  | 62  | 64  | 64  | 62  | 66  | 67  | 70  | 76  | 82  | 88  | 94  | 100 |
| 30           | 49                          | 50  | 56  | 58  | 60  | 60  | 62  | 63  | 63  | 64  | 62  | 63  | 67  | 68  | 71  | 77  | 83  | 88  | 94  | 100 |
| 31           | 47                          | 50  | 56  | 58  | 60  | 62  | 63  | 64  | 64  | 62  | 63  | 66  | 68  | 70  | 72  | 78  | 83  | 89  | 94  | 100 |
| 32           | 46                          | 49  | 56  | 59  | 60  | 62  | 63  | 66  | 62  | 63  | 66  | 67  | 70  | 72  | 73  | 78  | 84  | 89  | 95  | 100 |
| 33           | 43                          | 49  | 56  | 59  | 62  | 63  | 64  | 62  | 65  | 66  | 67  | 70  | 72  | 73  | 75  | 80  | 85  | 90  | 95  | 100 |
| 34           | 42                          | 47  | 56  | 60  | 62  | 63  | 61  | 63  | 66  | 67  | 70  | 71  | 73  | 75  | 76  | 81  | 86  | 90  | 95  | 100 |
| 35           | 40                          | 47  | 56  | 60  | 63  | 61  | 62  | 65  | 67  | 68  | 71  | 73  | 74  | 76  | 76  | 81  | 86  | 90  | 95  | 100 |
| 36           | 38                          | 42  | 56  | 60  | 59  | 61  | 63  | 65  | 67  | 68  | 70  | 72  | 74  | 76  | 77  | 82  | 86  | 91  | 95  | 100 |
| 37           | 38                          | 45  | 56  | 57  | 61  | 62  | 63  | 65  | 67  | 68  | 70  | 72  | 74  | 76  | 76  | 81  | 86  | 90  | 95  | 100 |
| 38           | 37                          | 44  | 53  | 58  | 61  | 62  | 65  | 66  | 67  | 69  | 69  | 73  | 75  | 76  | 77  | 82  | 86  | 91  | 95  | 100 |
| 39           | 37                          | 41  | 53  | 58  | 62  | 63  | 65  | 65  | 66  | 68  | 69  | 72  | 74  | 76  | 76  | 81  | 86  | 90  | 95  | 100 |
| 40           | 34                          | 40  | 53  | 58  | 62  | 63  | 65  | 65  | 66  | 68  | 68  | 71  | 75  | 76  | 77  | 82  | 86  | 91  | 95  | 100 |

Male, Aggregate

Issue

Duration

| Age | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
|-----|----|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 41  | 34 | 41 | 53 | 58 | 62 | 63 | 65 | 64 | 64 | 66 | 68  | 70  | 74  | 76  | 77  | 82  | 86  | 91  | 95  | 100 |
| 42  | 34 | 43 | 53 | 58 | 61 | 62 | 63 | 63 | 63 | 64 | 66  | 69  | 72  | 75  | 77  | 82  | 86  | 91  | 95  | 100 |
| 43  | 34 | 43 | 54 | 59 | 60 | 61 | 63 | 62 | 62 | 64 | 66  | 67  | 72  | 74  | 77  | 82  | 86  | 91  | 95  | 100 |
| 44  | 34 | 44 | 54 | 58 | 59 | 60 | 61 | 60 | 61 | 62 | 64  | 67  | 71  | 74  | 77  | 82  | 86  | 91  | 95  | 100 |
| 45  | 34 | 45 | 53 | 58 | 59 | 60 | 60 | 60 | 59 | 60 | 63  | 66  | 71  | 74  | 77  | 82  | 86  | 91  | 95  | 100 |
| 46  | 31 | 43 | 52 | 56 | 57 | 58 | 59 | 59 | 59 | 60 | 63  | 67  | 71  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 47  | 32 | 42 | 50 | 53 | 55 | 56 | 57 | 58 | 59 | 60 | 65  | 68  | 71  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 48  | 32 | 41 | 47 | 52 | 54 | 56 | 57 | 57 | 57 | 61 | 65  | 68  | 72  | 73  | 74  | 79  | 84  | 90  | 95  | 100 |
| 49  | 30 | 40 | 46 | 49 | 52 | 54 | 55 | 56 | 57 | 61 | 66  | 69  | 72  | 73  | 74  | 79  | 84  | 90  | 95  | 100 |
| 50  | 30 | 38 | 44 | 47 | 51 | 53 | 54 | 56 | 57 | 61 | 66  | 71  | 72  | 73  | 75  | 80  | 85  | 90  | 95  | 100 |
| 51  | 28 | 37 | 42 | 46 | 49 | 53 | 54 | 56 | 57 | 61 | 66  | 71  | 72  | 73  | 75  | 80  | 85  | 90  | 95  | 100 |
| 52  | 28 | 35 | 41 | 45 | 49 | 51 | 54 | 56 | 57 | 61 | 66  | 71  | 72  | 74  | 75  | 80  | 85  | 90  | 100 | 100 |
| 53  | 27 | 35 | 39 | 44 | 48 | 51 | 53 | 55 | 57 | 61 | 67  | 71  | 74  | 75  | 76  | 81  | 86  | 100 | 100 | 100 |
| 54  | 27 | 33 | 38 | 44 | 48 | 50 | 53 | 55 | 57 | 61 | 67  | 72  | 74  | 75  | 76  | 81  | 100 | 100 | 100 | 100 |
| 55  | 25 | 32 | 37 | 43 | 47 | 50 | 53 | 55 | 57 | 61 | 68  | 72  | 74  | 75  | 78  | 100 | 100 | 100 | 100 | 100 |
| 56  | 25 | 32 | 37 | 43 | 47 | 49 | 51 | 54 | 56 | 61 | 67  | 70  | 73  | 74  | 100 | 100 | 100 | 100 | 100 | 100 |
| 57  | 24 | 31 | 38 | 43 | 47 | 49 | 51 | 54 | 56 | 59 | 66  | 69  | 72  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 58  | 24 | 31 | 38 | 43 | 48 | 48 | 50 | 53 | 56 | 59 | 64  | 67  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 59  | 23 | 30 | 39 | 43 | 48 | 48 | 51 | 53 | 55 | 58 | 63  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 60  | 23 | 30 | 39 | 43 | 48 | 47 | 50 | 52 | 53 | 57 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 61  | 23 | 30 | 39 | 43 | 49 | 49 | 50 | 52 | 53 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 62  | 23 | 30 | 39 | 44 | 49 | 49 | 51 | 52 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 63  | 22 | 30 | 39 | 45 | 50 | 50 | 52 | 75 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 64  | 22 | 30 | 39 | 45 | 50 | 51 | 75 | 75 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 65  | 22 | 30 | 39 | 45 | 50 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 66  | 22 | 30 | 39 | 45 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 67  | 22 | 30 | 39 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 68  | 23 | 32 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 69  | 23 | 52 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 70  | 48 | 52 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Male, Aggregate

Issue

Duration

| Age | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |     |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 71  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 72  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 73  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 74  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 75  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 76  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 77  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 78  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 79  | 48  | 52  | 55  | 60  | 60  | 65  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 80  | 48  | 52  | 55  | 60  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 81  | 48  | 52  | 55  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 82  | 48  | 52  | 55  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 83  | 48  | 52  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 84  | 48  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 85+ | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Male, Non-Smoker

| Issue | Duration |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
|-------|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|       | 1        | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
| 0-15  | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 16    | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 17    | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 18    | 93       | 95  | 96  | 98  | 99  | 100 | 100 | 90  | 92  | 92  | 92  | 92  | 95  | 95  | 96  | 97  | 98  | 98  | 99  | 100 |
| 19    | 80       | 81  | 83  | 86  | 87  | 87  | 79  | 79  | 79  | 81  | 81  | 82  | 83  | 83  | 86  | 89  | 92  | 94  | 97  | 100 |
| 20    | 65       | 68  | 69  | 72  | 74  | 69  | 69  | 67  | 69  | 70  | 71  | 71  | 72  | 72  | 75  | 80  | 85  | 90  | 95  | 100 |
| 21    | 63       | 66  | 68  | 71  | 66  | 66  | 67  | 66  | 67  | 70  | 70  | 70  | 71  | 71  | 73  | 78  | 84  | 89  | 95  | 100 |
| 22    | 62       | 65  | 66  | 62  | 63  | 64  | 64  | 64  | 67  | 68  | 68  | 68  | 70  | 70  | 73  | 78  | 84  | 89  | 95  | 100 |
| 23    | 60       | 62  | 58  | 60  | 62  | 62  | 63  | 63  | 64  | 67  | 68  | 68  | 67  | 69  | 71  | 77  | 83  | 88  | 94  | 100 |
| 24    | 59       | 55  | 56  | 58  | 59  | 60  | 61  | 61  | 63  | 65  | 67  | 66  | 66  | 69  | 71  | 77  | 83  | 88  | 94  | 100 |
| 25    | 52       | 53  | 55  | 56  | 58  | 58  | 60  | 60  | 61  | 64  | 64  | 64  | 64  | 67  | 70  | 76  | 82  | 88  | 94  | 100 |
| 26    | 51       | 53  | 55  | 56  | 58  | 60  | 61  | 61  | 61  | 63  | 64  | 64  | 66  | 69  | 67  | 74  | 80  | 87  | 93  | 100 |
| 27    | 51       | 52  | 55  | 58  | 60  | 60  | 61  | 61  | 62  | 63  | 64  | 66  | 67  | 66  | 67  | 74  | 80  | 87  | 93  | 100 |
| 28    | 49       | 52  | 57  | 58  | 60  | 61  | 63  | 62  | 62  | 64  | 66  | 66  | 63  | 66  | 68  | 74  | 81  | 87  | 94  | 100 |
| 29    | 49       | 51  | 57  | 60  | 61  | 61  | 62  | 62  | 63  | 64  | 66  | 63  | 65  | 67  | 68  | 74  | 81  | 87  | 94  | 100 |
| 30    | 49       | 51  | 57  | 60  | 61  | 62  | 63  | 63  | 63  | 64  | 62  | 63  | 66  | 68  | 70  | 76  | 82  | 88  | 94  | 100 |
| 31    | 47       | 50  | 57  | 60  | 60  | 62  | 63  | 64  | 64  | 62  | 63  | 65  | 67  | 70  | 71  | 77  | 83  | 88  | 94  | 100 |
| 32    | 46       | 50  | 57  | 60  | 62  | 63  | 64  | 64  | 62  | 63  | 65  | 66  | 68  | 71  | 72  | 78  | 83  | 89  | 94  | 100 |
| 33    | 45       | 49  | 56  | 60  | 62  | 63  | 64  | 62  | 63  | 65  | 66  | 68  | 71  | 73  | 74  | 79  | 84  | 90  | 95  | 100 |
| 34    | 43       | 48  | 56  | 62  | 63  | 64  | 62  | 62  | 65  | 66  | 67  | 70  | 72  | 74  | 74  | 79  | 84  | 90  | 95  | 100 |
| 35    | 41       | 47  | 56  | 62  | 63  | 61  | 62  | 63  | 66  | 67  | 68  | 70  | 72  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 36    | 40       | 47  | 56  | 62  | 59  | 61  | 62  | 63  | 66  | 67  | 68  | 70  | 72  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 37    | 38       | 45  | 56  | 58  | 59  | 61  | 62  | 63  | 66  | 67  | 67  | 69  | 71  | 73  | 74  | 79  | 84  | 90  | 95  | 100 |
| 38    | 38       | 45  | 53  | 58  | 61  | 62  | 63  | 65  | 65  | 67  | 68  | 70  | 72  | 74  | 73  | 78  | 84  | 89  | 95  | 100 |
| 39    | 37       | 41  | 53  | 58  | 61  | 62  | 63  | 64  | 65  | 67  | 68  | 70  | 71  | 73  | 73  | 78  | 84  | 89  | 95  | 100 |
| 40    | 34       | 41  | 53  | 58  | 61  | 62  | 63  | 64  | 64  | 66  | 67  | 69  | 71  | 73  | 72  | 78  | 83  | 89  | 94  | 100 |

**Male, Non-Smoker**  
**Duration**

| Issue | Duration |    |    |    |    |    |    |    |    |    |     |     |     |     |     |     |     |     |     |     |
|-------|----------|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Age   | 1        | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
| 41    | 34       | 41 | 53 | 58 | 61 | 61 | 62 | 62 | 63 | 65 | 65  | 67  | 69  | 71  | 71  | 77  | 83  | 88  | 94  | 100 |
| 42    | 34       | 43 | 53 | 58 | 60 | 61 | 62 | 61 | 61 | 63 | 64  | 66  | 67  | 69  | 71  | 77  | 83  | 88  | 94  | 100 |
| 43    | 32       | 43 | 53 | 58 | 60 | 61 | 60 | 60 | 60 | 60 | 62  | 64  | 66  | 68  | 69  | 75  | 81  | 88  | 94  | 100 |
| 44    | 32       | 44 | 52 | 57 | 59 | 60 | 60 | 59 | 59 | 58 | 60  | 62  | 65  | 67  | 69  | 75  | 81  | 88  | 94  | 100 |
| 45    | 32       | 44 | 52 | 57 | 59 | 60 | 59 | 57 | 57 | 57 | 59  | 61  | 63  | 66  | 68  | 74  | 81  | 87  | 94  | 100 |
| 46    | 32       | 42 | 50 | 54 | 56 | 57 | 57 | 56 | 55 | 56 | 59  | 61  | 63  | 65  | 67  | 74  | 80  | 87  | 93  | 100 |
| 47    | 30       | 40 | 48 | 52 | 54 | 55 | 55 | 54 | 54 | 55 | 59  | 61  | 62  | 63  | 66  | 73  | 80  | 86  | 93  | 100 |
| 48    | 30       | 40 | 46 | 49 | 51 | 52 | 53 | 53 | 54 | 55 | 57  | 61  | 62  | 63  | 63  | 70  | 78  | 85  | 93  | 100 |
| 49    | 29       | 39 | 43 | 48 | 50 | 51 | 50 | 51 | 53 | 54 | 57  | 61  | 61  | 62  | 62  | 70  | 77  | 85  | 92  | 100 |
| 50    | 29       | 37 | 42 | 45 | 47 | 48 | 49 | 50 | 51 | 54 | 57  | 61  | 61  | 61  | 61  | 69  | 77  | 84  | 92  | 100 |
| 51    | 27       | 35 | 40 | 43 | 45 | 47 | 48 | 50 | 51 | 53 | 57  | 60  | 61  | 61  | 62  | 70  | 77  | 85  | 92  | 100 |
| 52    | 27       | 34 | 39 | 42 | 44 | 45 | 48 | 49 | 50 | 53 | 56  | 60  | 60  | 62  | 62  | 70  | 77  | 85  | 100 | 100 |
| 53    | 25       | 31 | 37 | 41 | 44 | 45 | 47 | 49 | 50 | 51 | 56  | 59  | 61  | 61  | 62  | 70  | 77  | 100 | 100 | 100 |
| 54    | 25       | 30 | 36 | 39 | 43 | 44 | 47 | 48 | 49 | 51 | 55  | 59  | 59  | 61  | 62  | 70  | 100 | 100 | 100 | 100 |
| 55    | 24       | 29 | 35 | 38 | 42 | 43 | 45 | 48 | 49 | 50 | 56  | 58  | 59  | 61  | 62  | 100 | 100 | 100 | 100 | 100 |
| 56    | 23       | 29 | 35 | 38 | 42 | 42 | 44 | 47 | 48 | 50 | 55  | 57  | 58  | 59  | 100 | 100 | 100 | 100 | 100 | 100 |
| 57    | 23       | 28 | 35 | 38 | 42 | 42 | 43 | 45 | 47 | 49 | 53  | 55  | 56  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 58    | 22       | 28 | 33 | 37 | 41 | 41 | 43 | 45 | 45 | 47 | 51  | 53  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 59    | 22       | 26 | 33 | 37 | 41 | 41 | 42 | 44 | 44 | 46 | 50  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 60    | 20       | 26 | 33 | 37 | 41 | 40 | 41 | 42 | 42 | 45 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 61    | 20       | 26 | 33 | 37 | 41 | 40 | 41 | 42 | 42 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 62    | 19       | 25 | 32 | 38 | 40 | 40 | 41 | 42 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 63    | 19       | 25 | 33 | 36 | 40 | 40 | 41 | 75 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 64    | 18       | 24 | 32 | 36 | 39 | 40 | 75 | 75 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 65    | 18       | 24 | 32 | 36 | 39 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 66    | 18       | 24 | 32 | 36 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 67    | 18       | 24 | 32 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 68    | 18       | 24 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 69    | 18       | 52 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 70    | 48       | 52 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Male, Non-Smoker

Issue

Duration

| Age | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 71  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 72  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 73  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 74  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 75  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 76  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 77  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 78  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 79  | 48  | 52  | 55  | 60  | 60  | 65  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 80  | 48  | 52  | 55  | 60  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 81  | 48  | 52  | 55  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 82  | 48  | 52  | 55  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 83  | 48  | 52  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 84  | 48  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 85+ | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Male, Smoker

Issue

Duration

| Age  | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |     |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 0-15 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 16   | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 17   | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 18   | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 19   | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 20   | 98  | 100 | 100 | 100 | 100 | 100 | 100 | 99  | 99  | 99  | 100 | 99  | 99  | 99  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 21   | 95  | 98  | 99  | 100 | 95  | 96  | 96  | 95  | 96  | 97  | 97  | 96  | 96  | 96  | 96  | 97  | 98  | 98  | 99  | 99  | 100 |
| 22   | 92  | 95  | 96  | 90  | 90  | 93  | 93  | 92  | 93  | 95  | 95  | 93  | 93  | 92  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 23   | 90  | 92  | 85  | 88  | 88  | 89  | 89  | 89  | 90  | 90  | 90  | 90  | 89  | 90  | 92  | 94  | 95  | 97  | 98  | 98  | 100 |
| 24   | 87  | 81  | 82  | 85  | 84  | 86  | 88  | 86  | 86  | 88  | 88  | 86  | 86  | 88  | 89  | 91  | 93  | 96  | 98  | 98  | 100 |
| 25   | 77  | 78  | 79  | 82  | 81  | 83  | 83  | 82  | 83  | 85  | 84  | 84  | 84  | 85  | 86  | 89  | 92  | 94  | 97  | 97  | 100 |
| 26   | 75  | 77  | 79  | 82  | 82  | 83  | 83  | 82  | 83  | 84  | 84  | 84  | 84  | 85  | 81  | 85  | 89  | 92  | 96  | 96  | 100 |
| 27   | 73  | 75  | 78  | 82  | 82  | 83  | 83  | 82  | 82  | 82  | 82  | 84  | 84  | 80  | 81  | 85  | 89  | 92  | 96  | 96  | 100 |
| 28   | 71  | 73  | 79  | 82  | 81  | 82  | 83  | 81  | 81  | 82  | 82  | 82  | 80  | 80  | 81  | 85  | 89  | 92  | 96  | 96  | 100 |
| 29   | 69  | 72  | 78  | 81  | 81  | 82  | 82  | 81  | 81  | 81  | 81  | 77  | 80  | 80  | 81  | 85  | 89  | 92  | 96  | 96  | 100 |
| 30   | 68  | 71  | 78  | 81  | 81  | 81  | 82  | 81  | 81  | 81  | 76  | 77  | 80  | 80  | 81  | 85  | 89  | 92  | 96  | 96  | 100 |
| 31   | 65  | 70  | 77  | 81  | 79  | 81  | 82  | 81  | 81  | 76  | 77  | 79  | 81  | 81  | 83  | 86  | 90  | 93  | 97  | 97  | 100 |
| 32   | 63  | 67  | 77  | 78  | 79  | 81  | 81  | 81  | 76  | 77  | 77  | 80  | 83  | 83  | 85  | 88  | 91  | 94  | 97  | 97  | 100 |
| 33   | 60  | 65  | 74  | 78  | 79  | 79  | 81  | 76  | 77  | 77  | 79  | 80  | 83  | 85  | 85  | 88  | 91  | 94  | 97  | 97  | 100 |
| 34   | 57  | 62  | 74  | 77  | 79  | 79  | 75  | 76  | 77  | 79  | 79  | 81  | 83  | 85  | 87  | 90  | 92  | 95  | 97  | 97  | 100 |
| 35   | 53  | 60  | 73  | 77  | 79  | 75  | 75  | 76  | 77  | 79  | 80  | 82  | 84  | 86  | 88  | 90  | 93  | 95  | 98  | 98  | 100 |
| 36   | 52  | 59  | 71  | 75  | 74  | 75  | 75  | 76  | 77  | 79  | 79  | 81  | 83  | 85  | 87  | 90  | 92  | 95  | 97  | 97  | 100 |
| 37   | 49  | 58  | 70  | 71  | 74  | 74  | 75  | 76  | 77  | 78  | 79  | 81  | 84  | 86  | 86  | 89  | 92  | 94  | 97  | 97  | 100 |
| 38   | 48  | 55  | 66  | 70  | 72  | 74  | 74  | 75  | 76  | 78  | 79  | 81  | 83  | 85  | 87  | 90  | 92  | 95  | 97  | 97  | 100 |
| 39   | 45  | 50  | 65  | 70  | 72  | 72  | 74  | 74  | 75  | 77  | 79  | 81  | 84  | 86  | 86  | 89  | 92  | 94  | 97  | 97  | 100 |
| 40   | 41  | 49  | 63  | 68  | 71  | 72  | 73  | 74  | 74  | 76  | 78  | 80  | 83  | 85  | 86  | 89  | 92  | 94  | 97  | 97  | 100 |

Male, Smoker

| Issue | Duration |    |    |    |    |    |    |    |    |    |     |     |     |     |     |     |     |     |     |     |
|-------|----------|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|       | Age      | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  |
| 41    | 40       | 49 | 63 | 68 | 71 | 72 | 72 | 72 | 73 | 75 | 76  | 78  | 81  | 84  | 85  | 88  | 91  | 94  | 97  | 100 |
| 42    | 40       | 49 | 62 | 68 | 70 | 71 | 71 | 71 | 71 | 73 | 75  | 76  | 81  | 83  | 85  | 88  | 91  | 94  | 97  | 100 |
| 43    | 39       | 50 | 62 | 67 | 69 | 69 | 70 | 70 | 70 | 71 | 73  | 76  | 79  | 83  | 85  | 88  | 91  | 94  | 97  | 100 |
| 44    | 39       | 50 | 60 | 66 | 68 | 69 | 68 | 69 | 69 | 69 | 71  | 74  | 79  | 81  | 85  | 88  | 91  | 94  | 97  | 100 |
| 45    | 37       | 50 | 60 | 66 | 68 | 68 | 68 | 67 | 67 | 67 | 69  | 73  | 78  | 81  | 85  | 88  | 91  | 94  | 97  | 100 |
| 46    | 37       | 48 | 58 | 63 | 65 | 67 | 66 | 66 | 66 | 67 | 71  | 74  | 78  | 81  | 84  | 87  | 90  | 94  | 97  | 100 |
| 47    | 36       | 47 | 55 | 61 | 63 | 64 | 64 | 64 | 65 | 67 | 71  | 75  | 79  | 81  | 84  | 87  | 90  | 94  | 97  | 100 |
| 48    | 35       | 46 | 53 | 58 | 60 | 62 | 63 | 63 | 65 | 67 | 72  | 75  | 79  | 81  | 83  | 86  | 90  | 93  | 97  | 100 |
| 49    | 34       | 45 | 51 | 56 | 58 | 59 | 61 | 62 | 63 | 67 | 72  | 77  | 80  | 81  | 83  | 86  | 90  | 93  | 97  | 100 |
| 50    | 34       | 43 | 49 | 53 | 55 | 57 | 60 | 61 | 63 | 67 | 73  | 78  | 80  | 81  | 81  | 85  | 89  | 92  | 96  | 100 |
| 51    | 32       | 42 | 47 | 52 | 55 | 57 | 60 | 61 | 63 | 67 | 73  | 78  | 80  | 83  | 84  | 87  | 90  | 94  | 97  | 100 |
| 52    | 32       | 40 | 46 | 50 | 54 | 56 | 60 | 61 | 63 | 67 | 73  | 78  | 81  | 84  | 85  | 88  | 91  | 94  | 100 | 100 |
| 53    | 30       | 37 | 44 | 49 | 54 | 56 | 59 | 61 | 65 | 67 | 74  | 79  | 83  | 85  | 87  | 90  | 92  | 100 | 100 | 100 |
| 54    | 30       | 36 | 43 | 48 | 53 | 55 | 59 | 61 | 65 | 67 | 74  | 80  | 84  | 85  | 89  | 91  | 100 | 100 | 100 | 100 |
| 55    | 29       | 35 | 42 | 47 | 53 | 55 | 59 | 61 | 65 | 67 | 75  | 80  | 84  | 86  | 90  | 100 | 100 | 100 | 100 | 100 |
| 56    | 28       | 35 | 42 | 47 | 53 | 55 | 57 | 60 | 63 | 68 | 74  | 79  | 83  | 85  | 100 | 100 | 100 | 100 | 100 | 100 |
| 57    | 28       | 35 | 42 | 47 | 53 | 54 | 57 | 60 | 64 | 67 | 74  | 78  | 81  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 58    | 26       | 33 | 43 | 48 | 54 | 54 | 56 | 59 | 63 | 67 | 73  | 78  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 59    | 26       | 33 | 43 | 48 | 54 | 53 | 57 | 59 | 63 | 66 | 73  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 60    | 25       | 33 | 43 | 48 | 54 | 53 | 56 | 58 | 62 | 66 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 61    | 25       | 33 | 43 | 49 | 55 | 55 | 57 | 59 | 63 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 62    | 25       | 33 | 43 | 50 | 56 | 56 | 58 | 61 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 63    | 24       | 33 | 45 | 51 | 56 | 56 | 59 | 75 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 64    | 24       | 34 | 45 | 51 | 57 | 57 | 75 | 75 | 75 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 65    | 24       | 34 | 45 | 52 | 57 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 66    | 24       | 35 | 45 | 53 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 67    | 25       | 35 | 45 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 68    | 25       | 36 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 69    | 27       | 52 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 70    | 48       | 52 | 55 | 60 | 60 | 65 | 70 | 70 | 70 | 70 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Male, Smoker

Issue

Duration

| Age | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |     |     |     |     |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 71  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |     |     |     |
| 72  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |     |     |
| 73  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |     |
| 74  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 75  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 76  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 77  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 78  | 48  | 52  | 55  | 60  | 60  | 65  | 70  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 79  | 48  | 52  | 55  | 60  | 60  | 65  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 80  | 48  | 52  | 55  | 60  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 81  | 48  | 52  | 55  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 82  | 48  | 52  | 55  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 83  | 48  | 52  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 84  | 48  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 85+ | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Female, Aggregate

| Issue | Duration |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
|-------|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|       | 1        | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
| 0-15  | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 16    | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 17    | 99       | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 93  | 95  | 96  | 97  | 97  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 18    | 83       | 83  | 84  | 84  | 84  | 84  | 86  | 78  | 78  | 79  | 82  | 84  | 85  | 88  | 88  | 90  | 93  | 95  | 98  | 100 |
| 19    | 65       | 66  | 68  | 68  | 68  | 68  | 63  | 63  | 64  | 66  | 69  | 71  | 72  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 20    | 48       | 50  | 51  | 51  | 51  | 47  | 48  | 48  | 49  | 51  | 56  | 57  | 58  | 61  | 63  | 70  | 78  | 85  | 93  | 100 |
| 21    | 47       | 48  | 50  | 51  | 47  | 47  | 48  | 49  | 51  | 53  | 57  | 60  | 61  | 64  | 64  | 71  | 78  | 86  | 93  | 100 |
| 22    | 44       | 47  | 48  | 45  | 47  | 47  | 48  | 49  | 53  | 54  | 60  | 61  | 63  | 64  | 66  | 73  | 80  | 86  | 93  | 100 |
| 23    | 42       | 45  | 44  | 45  | 47  | 47  | 49  | 51  | 53  | 54  | 61  | 64  | 64  | 67  | 69  | 75  | 81  | 88  | 94  | 100 |
| 24    | 39       | 40  | 42  | 44  | 47  | 47  | 50  | 51  | 54  | 56  | 64  | 64  | 66  | 69  | 70  | 76  | 82  | 88  | 94  | 100 |
| 25    | 34       | 38  | 41  | 44  | 47  | 47  | 50  | 53  | 56  | 57  | 64  | 67  | 69  | 71  | 73  | 78  | 84  | 89  | 95  | 100 |
| 26    | 34       | 38  | 41  | 45  | 49  | 49  | 51  | 56  | 58  | 59  | 66  | 69  | 70  | 73  | 70  | 76  | 82  | 88  | 94  | 100 |
| 27    | 34       | 38  | 41  | 47  | 50  | 51  | 54  | 57  | 59  | 60  | 69  | 70  | 73  | 70  | 71  | 77  | 83  | 88  | 94  | 100 |
| 28    | 34       | 37  | 43  | 47  | 53  | 53  | 56  | 59  | 62  | 63  | 70  | 73  | 70  | 72  | 74  | 79  | 84  | 90  | 95  | 100 |
| 29    | 34       | 38  | 43  | 49  | 54  | 56  | 58  | 60  | 63  | 64  | 73  | 70  | 72  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 30    | 35       | 38  | 43  | 50  | 56  | 56  | 59  | 63  | 66  | 67  | 70  | 71  | 74  | 75  | 76  | 81  | 86  | 90  | 95  | 100 |
| 31    | 35       | 38  | 43  | 51  | 56  | 58  | 60  | 64  | 67  | 65  | 71  | 72  | 74  | 75  | 76  | 81  | 86  | 90  | 95  | 100 |
| 32    | 35       | 39  | 45  | 51  | 56  | 59  | 63  | 66  | 65  | 66  | 72  | 72  | 75  | 76  | 76  | 81  | 86  | 90  | 95  | 100 |
| 33    | 36       | 39  | 44  | 52  | 58  | 62  | 64  | 65  | 66  | 67  | 72  | 74  | 75  | 76  | 76  | 81  | 86  | 90  | 95  | 100 |
| 34    | 36       | 40  | 45  | 52  | 58  | 63  | 63  | 66  | 67  | 68  | 74  | 74  | 76  | 76  | 76  | 81  | 86  | 90  | 95  | 100 |
| 35    | 36       | 40  | 45  | 53  | 59  | 61  | 65  | 67  | 68  | 70  | 75  | 74  | 75  | 76  | 75  | 80  | 85  | 90  | 95  | 100 |
| 36    | 36       | 40  | 45  | 53  | 55  | 62  | 65  | 67  | 68  | 70  | 74  | 74  | 74  | 75  | 75  | 80  | 85  | 90  | 95  | 100 |
| 37    | 36       | 41  | 47  | 52  | 57  | 62  | 65  | 67  | 68  | 69  | 72  | 72  | 73  | 75  | 74  | 79  | 84  | 90  | 95  | 100 |
| 38    | 34       | 41  | 44  | 52  | 57  | 63  | 66  | 68  | 69  | 70  | 72  | 71  | 72  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 39    | 34       | 40  | 45  | 53  | 58  | 63  | 66  | 68  | 69  | 69  | 70  | 70  | 70  | 73  | 74  | 79  | 84  | 90  | 95  | 100 |
| 40    | 32       | 40  | 45  | 53  | 58  | 65  | 65  | 67  | 68  | 69  | 70  | 69  | 70  | 73  | 73  | 78  | 84  | 89  | 95  | 100 |

Female, Aggregate

Duration

Issue

| Age | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
|-----|----|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 41  | 32 | 40 | 45 | 53 | 57 | 63 | 64 | 67 | 68 | 68 | 69  | 69  | 69  | 73  | 74  | 79  | 84  | 90  | 95  | 100 |
| 42  | 32 | 40 | 45 | 52 | 56 | 61 | 63 | 65 | 66 | 68 | 69  | 68  | 70  | 74  | 75  | 80  | 85  | 90  | 95  | 100 |
| 43  | 31 | 39 | 45 | 51 | 55 | 59 | 61 | 65 | 65 | 66 | 68  | 69  | 69  | 74  | 77  | 82  | 86  | 91  | 95  | 100 |
| 44  | 31 | 39 | 45 | 50 | 54 | 58 | 61 | 63 | 64 | 66 | 67  | 68  | 71  | 75  | 78  | 82  | 87  | 91  | 96  | 100 |
| 45  | 31 | 38 | 44 | 49 | 53 | 56 | 59 | 62 | 63 | 65 | 67  | 68  | 71  | 77  | 79  | 83  | 87  | 92  | 96  | 100 |
| 46  | 29 | 37 | 43 | 48 | 51 | 54 | 59 | 62 | 63 | 65 | 67  | 69  | 71  | 77  | 78  | 82  | 87  | 91  | 96  | 100 |
| 47  | 28 | 35 | 41 | 46 | 49 | 54 | 57 | 61 | 62 | 66 | 68  | 69  | 71  | 77  | 77  | 82  | 86  | 91  | 95  | 100 |
| 48  | 28 | 35 | 41 | 44 | 49 | 52 | 57 | 61 | 63 | 66 | 68  | 71  | 72  | 75  | 77  | 82  | 86  | 91  | 95  | 100 |
| 49  | 26 | 34 | 39 | 43 | 47 | 52 | 55 | 61 | 63 | 67 | 69  | 71  | 72  | 75  | 75  | 80  | 85  | 90  | 95  | 100 |
| 50  | 25 | 32 | 38 | 41 | 46 | 50 | 55 | 61 | 63 | 67 | 69  | 72  | 72  | 75  | 74  | 79  | 84  | 90  | 95  | 100 |
| 51  | 25 | 32 | 38 | 41 | 45 | 50 | 55 | 61 | 63 | 66 | 68  | 69  | 71  | 74  | 74  | 79  | 84  | 90  | 95  | 100 |
| 52  | 23 | 30 | 36 | 41 | 45 | 51 | 56 | 61 | 62 | 65 | 66  | 68  | 68  | 73  | 73  | 78  | 84  | 89  | 100 | 100 |
| 53  | 23 | 30 | 36 | 41 | 47 | 51 | 56 | 61 | 62 | 63 | 65  | 66  | 68  | 72  | 72  | 78  | 83  | 100 | 100 | 100 |
| 54  | 22 | 29 | 35 | 41 | 47 | 53 | 57 | 61 | 61 | 62 | 62  | 66  | 66  | 69  | 70  | 76  | 100 | 100 | 100 | 100 |
| 55  | 22 | 29 | 35 | 41 | 47 | 53 | 57 | 61 | 61 | 61 | 62  | 63  | 64  | 68  | 69  | 100 | 100 | 100 | 100 | 100 |
| 56  | 22 | 29 | 35 | 41 | 45 | 51 | 56 | 59 | 60 | 61 | 62  | 63  | 64  | 67  | 100 | 100 | 100 | 100 | 100 | 100 |
| 57  | 22 | 29 | 35 | 41 | 45 | 50 | 54 | 56 | 58 | 59 | 61  | 62  | 63  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 58  | 22 | 30 | 36 | 41 | 44 | 49 | 53 | 56 | 57 | 57 | 61  | 62  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 59  | 22 | 30 | 36 | 41 | 44 | 48 | 51 | 53 | 55 | 56 | 59  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 60  | 22 | 30 | 36 | 41 | 43 | 47 | 50 | 51 | 53 | 55 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 61  | 22 | 29 | 35 | 39 | 42 | 46 | 49 | 50 | 52 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 62  | 20 | 28 | 33 | 39 | 41 | 45 | 47 | 49 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 63  | 20 | 28 | 33 | 38 | 41 | 44 | 46 | 80 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 64  | 19 | 27 | 32 | 36 | 40 | 42 | 80 | 80 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 65  | 19 | 25 | 30 | 35 | 39 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 66  | 19 | 25 | 30 | 35 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 67  | 19 | 25 | 30 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 68  | 19 | 25 | 68 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 69  | 19 | 64 | 68 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 70  | 60 | 60 | 64 | 68 | 68 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Female, Aggregate

Issue

Duration

| Age | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 71  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 72  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 73  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 74  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 75  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 76  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 77  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 78  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 79  | 60  | 60  | 64  | 68  | 68  | 72  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 80  | 60  | 60  | 64  | 68  | 68  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 81  | 60  | 60  | 64  | 68  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 82  | 60  | 60  | 64  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 83  | 60  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 84  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 85+ | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Female, Non-Smoker

| Issue | Duration |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
|-------|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|       | 1        | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
| 0-15  | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 16    | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 17    | 96       | 98  | 98  | 98  | 98  | 99  | 99  | 99  | 92  | 92  | 93  | 95  | 95  | 97  | 99  | 99  | 99  | 100 | 100 | 100 |
| 18    | 78       | 80  | 80  | 80  | 80  | 81  | 81  | 74  | 75  | 75  | 78  | 79  | 82  | 83  | 85  | 88  | 91  | 94  | 97  | 100 |
| 19    | 60       | 62  | 63  | 63  | 63  | 65  | 59  | 59  | 60  | 60  | 64  | 67  | 67  | 70  | 72  | 78  | 83  | 89  | 94  | 100 |
| 20    | 42       | 44  | 45  | 45  | 45  | 42  | 42  | 42  | 45  | 45  | 50  | 51  | 53  | 56  | 58  | 66  | 75  | 83  | 92  | 100 |
| 21    | 41       | 42  | 44  | 45  | 41  | 42  | 42  | 44  | 47  | 47  | 51  | 53  | 54  | 57  | 59  | 67  | 75  | 84  | 92  | 100 |
| 22    | 39       | 41  | 44  | 41  | 41  | 42  | 44  | 45  | 49  | 49  | 54  | 56  | 57  | 58  | 60  | 68  | 76  | 84  | 92  | 100 |
| 23    | 38       | 41  | 38  | 40  | 41  | 42  | 44  | 46  | 49  | 50  | 56  | 57  | 58  | 60  | 62  | 70  | 77  | 85  | 92  | 100 |
| 24    | 36       | 36  | 38  | 40  | 41  | 42  | 46  | 47  | 50  | 51  | 58  | 59  | 60  | 62  | 63  | 70  | 78  | 85  | 93  | 100 |
| 25    | 32       | 34  | 37  | 40  | 41  | 43  | 46  | 49  | 51  | 53  | 59  | 60  | 62  | 63  | 64  | 71  | 78  | 86  | 93  | 100 |
| 26    | 32       | 34  | 37  | 41  | 43  | 45  | 47  | 50  | 53  | 53  | 60  | 62  | 63  | 64  | 62  | 70  | 77  | 85  | 92  | 100 |
| 27    | 32       | 34  | 38  | 43  | 46  | 47  | 49  | 51  | 53  | 55  | 62  | 63  | 64  | 62  | 62  | 70  | 77  | 85  | 92  | 100 |
| 28    | 30       | 34  | 39  | 43  | 47  | 49  | 51  | 53  | 56  | 58  | 63  | 63  | 61  | 62  | 63  | 70  | 78  | 85  | 93  | 100 |
| 29    | 30       | 35  | 40  | 45  | 50  | 51  | 52  | 55  | 58  | 59  | 64  | 61  | 62  | 63  | 63  | 70  | 78  | 85  | 93  | 100 |
| 30    | 31       | 35  | 40  | 46  | 51  | 52  | 53  | 56  | 59  | 60  | 62  | 62  | 63  | 65  | 65  | 72  | 79  | 86  | 93  | 100 |
| 31    | 31       | 35  | 40  | 46  | 51  | 53  | 55  | 58  | 60  | 58  | 62  | 62  | 63  | 65  | 65  | 72  | 79  | 86  | 93  | 100 |
| 32    | 32       | 35  | 40  | 45  | 51  | 53  | 56  | 59  | 57  | 58  | 62  | 63  | 63  | 65  | 64  | 71  | 78  | 86  | 93  | 100 |
| 33    | 32       | 36  | 41  | 47  | 52  | 55  | 58  | 55  | 58  | 59  | 63  | 63  | 65  | 65  | 65  | 72  | 79  | 86  | 93  | 100 |
| 34    | 33       | 36  | 41  | 47  | 52  | 55  | 55  | 57  | 58  | 59  | 63  | 65  | 64  | 65  | 64  | 71  | 78  | 86  | 93  | 100 |
| 35    | 33       | 36  | 41  | 47  | 52  | 53  | 57  | 58  | 59  | 61  | 63  | 64  | 64  | 64  | 64  | 71  | 78  | 86  | 93  | 100 |
| 36    | 33       | 36  | 41  | 47  | 49  | 53  | 57  | 58  | 59  | 61  | 63  | 64  | 63  | 64  | 63  | 70  | 78  | 85  | 93  | 100 |
| 37    | 32       | 36  | 41  | 44  | 49  | 53  | 57  | 58  | 59  | 60  | 62  | 62  | 61  | 62  | 63  | 70  | 78  | 85  | 93  | 100 |
| 38    | 32       | 37  | 39  | 45  | 50  | 54  | 57  | 58  | 60  | 60  | 61  | 61  | 61  | 62  | 61  | 69  | 77  | 84  | 92  | 100 |
| 39    | 30       | 35  | 39  | 45  | 50  | 54  | 57  | 58  | 60  | 59  | 60  | 60  | 59  | 60  | 61  | 69  | 77  | 84  | 92  | 100 |
| 40    | 28       | 35  | 39  | 45  | 50  | 54  | 56  | 57  | 59  | 59  | 60  | 59  | 59  | 59  | 60  | 68  | 76  | 84  | 92  | 100 |

Female, Non-Smoker

| Issue | Duration |    |    |    |    |    |    |    |    |    |     |     |     |     |     |     |     |     |     |     |
|-------|----------|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|       | Age      | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  |
| 41    | 28       | 35 | 39 | 45 | 49 | 52 | 55 | 55 | 58 | 57 | 58  | 59  | 58  | 59  | 60  | 68  | 76  | 84  | 92  | 100 |
| 42    | 27       | 35 | 39 | 44 | 49 | 52 | 54 | 55 | 56 | 57 | 57  | 57  | 58  | 60  | 61  | 69  | 77  | 84  | 92  | 100 |
| 43    | 27       | 34 | 39 | 44 | 47 | 50 | 53 | 53 | 55 | 55 | 56  | 57  | 56  | 60  | 61  | 69  | 77  | 84  | 92  | 100 |
| 44    | 26       | 34 | 38 | 42 | 47 | 50 | 52 | 53 | 54 | 55 | 55  | 55  | 56  | 61  | 62  | 70  | 77  | 85  | 92  | 100 |
| 45    | 26       | 33 | 38 | 42 | 45 | 48 | 51 | 51 | 52 | 53 | 54  | 55  | 56  | 61  | 62  | 70  | 77  | 85  | 92  | 100 |
| 46    | 24       | 32 | 37 | 40 | 43 | 47 | 49 | 51 | 52 | 53 | 54  | 55  | 56  | 60  | 61  | 69  | 77  | 84  | 92  | 100 |
| 47    | 24       | 30 | 35 | 39 | 42 | 45 | 47 | 49 | 51 | 53 | 54  | 55  | 56  | 59  | 60  | 68  | 76  | 84  | 92  | 100 |
| 48    | 23       | 30 | 35 | 37 | 40 | 44 | 47 | 49 | 50 | 53 | 54  | 55  | 55  | 59  | 57  | 66  | 74  | 83  | 91  | 100 |
| 49    | 23       | 29 | 33 | 35 | 39 | 42 | 45 | 48 | 50 | 53 | 54  | 55  | 55  | 57  | 56  | 65  | 74  | 82  | 91  | 100 |
| 50    | 21       | 27 | 32 | 34 | 37 | 41 | 44 | 48 | 50 | 53 | 54  | 55  | 55  | 56  | 55  | 64  | 73  | 82  | 91  | 100 |
| 51    | 21       | 26 | 30 | 34 | 37 | 41 | 44 | 48 | 49 | 51 | 53  | 53  | 54  | 55  | 55  | 64  | 73  | 82  | 91  | 100 |
| 52    | 20       | 25 | 30 | 33 | 37 | 41 | 44 | 47 | 48 | 50 | 50  | 51  | 51  | 55  | 53  | 62  | 72  | 81  | 100 | 100 |
| 53    | 19       | 24 | 29 | 32 | 37 | 41 | 43 | 47 | 48 | 48 | 49  | 49  | 51  | 52  | 52  | 62  | 71  | 100 | 100 | 100 |
| 54    | 18       | 24 | 29 | 32 | 37 | 41 | 43 | 45 | 47 | 47 | 47  | 49  | 49  | 51  | 51  | 61  | 100 | 100 | 100 | 100 |
| 55    | 18       | 23 | 28 | 32 | 37 | 41 | 43 | 45 | 45 | 45 | 46  | 46  | 47  | 50  | 50  | 100 | 100 | 100 | 100 | 100 |
| 56    | 18       | 23 | 28 | 32 | 36 | 39 | 42 | 44 | 44 | 45 | 46  | 46  | 46  | 49  | 100 | 100 | 100 | 100 | 100 | 100 |
| 57    | 18       | 23 | 28 | 31 | 35 | 38 | 41 | 42 | 44 | 44 | 45  | 45  | 46  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 58    | 17       | 23 | 26 | 31 | 35 | 36 | 38 | 41 | 41 | 42 | 45  | 45  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 59    | 17       | 23 | 26 | 30 | 33 | 35 | 38 | 39 | 40 | 41 | 44  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 60    | 17       | 23 | 26 | 30 | 32 | 34 | 36 | 38 | 39 | 40 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 61    | 17       | 22 | 25 | 29 | 32 | 33 | 35 | 36 | 38 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 62    | 16       | 22 | 25 | 28 | 30 | 32 | 34 | 35 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 63    | 16       | 20 | 24 | 28 | 30 | 32 | 34 | 80 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 64    | 14       | 21 | 24 | 27 | 29 | 30 | 80 | 80 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 65    | 15       | 19 | 23 | 25 | 28 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 66    | 15       | 19 | 23 | 25 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 67    | 15       | 19 | 22 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 68    | 13       | 18 | 68 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 69    | 13       | 64 | 68 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 70    | 60       | 60 | 64 | 68 | 68 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Female, Non-Smoker

| Issue | Duration |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
|-------|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|       | 1        | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
| 71    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 72    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 73    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 74    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 75    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 76    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 77    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 78    | 60       | 60  | 64  | 68  | 68  | 72  | 75  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 79    | 60       | 60  | 64  | 68  | 68  | 72  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 80    | 60       | 60  | 64  | 68  | 68  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 81    | 60       | 60  | 64  | 68  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 82    | 60       | 60  | 64  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 83    | 60       | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 84    | 60       | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 85+   | 100      | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

**Female, Smoker**  
**Duration**

Issue

| Age  | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |     |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 0-15 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 16   | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 17   | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 18   | 99  | 100 | 100 | 100 | 100 | 100 | 100 | 95  | 96  | 97  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 19   | 87  | 89  | 92  | 92  | 92  | 92  | 84  | 84  | 86  | 86  | 92  | 93  | 95  | 96  | 99  | 99  | 99  | 100 | 100 | 100 | 100 |
| 20   | 74  | 77  | 80  | 80  | 80  | 73  | 73  | 73  | 75  | 77  | 83  | 83  | 86  | 88  | 90  | 92  | 94  | 96  | 98  | 98  | 100 |
| 21   | 71  | 74  | 78  | 78  | 71  | 71  | 73  | 74  | 77  | 79  | 85  | 86  | 88  | 89  | 90  | 92  | 94  | 96  | 98  | 98  | 100 |
| 22   | 68  | 71  | 75  | 70  | 71  | 71  | 73  | 74  | 78  | 79  | 88  | 90  | 89  | 89  | 92  | 94  | 95  | 97  | 98  | 98  | 100 |
| 23   | 65  | 69  | 67  | 70  | 70  | 70  | 73  | 77  | 79  | 81  | 89  | 90  | 90  | 92  | 92  | 94  | 95  | 97  | 98  | 98  | 100 |
| 24   | 62  | 60  | 64  | 69  | 70  | 70  | 74  | 77  | 79  | 81  | 92  | 90  | 92  | 93  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 25   | 53  | 58  | 63  | 67  | 69  | 70  | 74  | 78  | 81  | 82  | 92  | 93  | 93  | 95  | 95  | 96  | 97  | 98  | 99  | 99  | 100 |
| 26   | 53  | 58  | 63  | 69  | 71  | 72  | 75  | 79  | 82  | 82  | 93  | 93  | 95  | 96  | 90  | 92  | 94  | 96  | 98  | 98  | 100 |
| 27   | 52  | 56  | 63  | 70  | 74  | 74  | 78  | 81  | 82  | 84  | 93  | 95  | 95  | 90  | 90  | 92  | 94  | 96  | 98  | 98  | 100 |
| 28   | 52  | 56  | 64  | 71  | 75  | 77  | 79  | 82  | 85  | 86  | 95  | 95  | 90  | 92  | 92  | 94  | 95  | 97  | 98  | 98  | 100 |
| 29   | 51  | 56  | 64  | 71  | 78  | 78  | 81  | 84  | 86  | 88  | 95  | 90  | 90  | 92  | 92  | 94  | 95  | 97  | 98  | 98  | 100 |
| 30   | 51  | 56  | 64  | 72  | 79  | 79  | 82  | 85  | 88  | 89  | 90  | 90  | 92  | 93  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 31   | 51  | 56  | 64  | 72  | 78  | 81  | 84  | 84  | 88  | 84  | 90  | 90  | 92  | 93  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 32   | 51  | 56  | 64  | 71  | 78  | 81  | 85  | 86  | 84  | 85  | 90  | 90  | 92  | 94  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 33   | 51  | 57  | 62  | 71  | 78  | 82  | 85  | 83  | 84  | 85  | 90  | 92  | 93  | 93  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 34   | 51  | 56  | 62  | 71  | 78  | 82  | 81  | 83  | 85  | 86  | 90  | 92  | 92  | 94  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 35   | 51  | 56  | 62  | 71  | 78  | 79  | 83  | 84  | 85  | 86  | 90  | 91  | 91  | 93  | 93  | 94  | 96  | 97  | 99  | 99  | 100 |
| 36   | 49  | 56  | 62  | 71  | 74  | 79  | 83  | 84  | 85  | 86  | 90  | 90  | 91  | 93  | 92  | 94  | 95  | 97  | 98  | 98  | 100 |
| 37   | 48  | 55  | 62  | 67  | 74  | 79  | 83  | 84  | 85  | 86  | 89  | 90  | 89  | 92  | 91  | 93  | 95  | 96  | 98  | 98  | 100 |
| 38   | 47  | 55  | 57  | 66  | 72  | 77  | 81  | 84  | 86  | 86  | 87  | 88  | 88  | 90  | 91  | 93  | 95  | 96  | 98  | 98  | 100 |
| 39   | 45  | 50  | 57  | 66  | 72  | 77  | 81  | 83  | 85  | 86  | 86  | 87  | 86  | 89  | 90  | 92  | 94  | 96  | 98  | 98  | 100 |
| 40   | 41  | 50  | 57  | 66  | 72  | 77  | 81  | 83  | 84  | 85  | 86  | 86  | 86  | 86  | 89  | 91  | 93  | 96  | 98  | 98  | 100 |

Female, Smoker

Issue

Duration

| Age | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
|-----|----|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 41  | 40 | 50 | 57 | 65 | 71 | 76 | 79 | 81 | 83 | 84 | 85  | 86  | 85  | 89  | 90  | 92  | 94  | 96  | 98  | 100 |
| 42  | 40 | 49 | 57 | 65 | 69 | 74 | 77 | 80 | 82 | 83 | 84  | 85  | 86  | 90  | 92  | 94  | 95  | 97  | 98  | 100 |
| 43  | 39 | 49 | 55 | 63 | 69 | 73 | 76 | 78 | 80 | 82 | 83  | 84  | 85  | 92  | 93  | 94  | 96  | 97  | 99  | 100 |
| 44  | 39 | 48 | 55 | 62 | 67 | 71 | 75 | 78 | 80 | 80 | 82  | 84  | 86  | 93  | 96  | 97  | 98  | 98  | 99  | 100 |
| 45  | 37 | 47 | 55 | 61 | 65 | 70 | 73 | 76 | 78 | 80 | 81  | 84  | 86  | 94  | 97  | 98  | 98  | 99  | 99  | 100 |
| 46  | 36 | 46 | 53 | 59 | 63 | 68 | 71 | 75 | 77 | 79 | 83  | 85  | 86  | 93  | 96  | 97  | 98  | 98  | 99  | 100 |
| 47  | 34 | 44 | 51 | 57 | 62 | 66 | 70 | 75 | 77 | 80 | 83  | 85  | 86  | 93  | 94  | 95  | 96  | 98  | 99  | 100 |
| 48  | 34 | 44 | 50 | 54 | 60 | 64 | 69 | 74 | 77 | 80 | 84  | 86  | 87  | 92  | 92  | 94  | 95  | 97  | 98  | 100 |
| 49  | 33 | 42 | 48 | 53 | 58 | 63 | 68 | 74 | 77 | 81 | 84  | 86  | 87  | 92  | 91  | 93  | 95  | 96  | 98  | 100 |
| 50  | 31 | 41 | 46 | 51 | 57 | 61 | 67 | 74 | 77 | 81 | 85  | 87  | 87  | 91  | 90  | 92  | 94  | 96  | 98  | 100 |
| 51  | 30 | 39 | 45 | 51 | 56 | 61 | 67 | 74 | 75 | 80 | 83  | 85  | 85  | 90  | 90  | 92  | 94  | 96  | 98  | 100 |
| 52  | 29 | 38 | 45 | 50 | 56 | 62 | 68 | 74 | 75 | 79 | 81  | 83  | 84  | 90  | 90  | 92  | 94  | 96  | 100 | 100 |
| 53  | 28 | 37 | 43 | 49 | 57 | 62 | 68 | 73 | 74 | 77 | 79  | 81  | 83  | 89  | 89  | 91  | 93  | 100 | 100 | 100 |
| 54  | 28 | 36 | 43 | 49 | 57 | 63 | 69 | 73 | 74 | 75 | 78  | 80  | 81  | 87  | 89  | 91  | 100 | 100 | 100 | 100 |
| 55  | 26 | 35 | 42 | 49 | 57 | 63 | 69 | 73 | 73 | 74 | 76  | 78  | 79  | 86  | 87  | 100 | 100 | 100 | 100 | 100 |
| 56  | 26 | 35 | 42 | 49 | 56 | 62 | 67 | 71 | 72 | 74 | 76  | 78  | 79  | 85  | 100 | 100 | 100 | 100 | 100 | 100 |
| 57  | 26 | 35 | 42 | 49 | 55 | 61 | 66 | 69 | 72 | 73 | 76  | 78  | 79  | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 58  | 28 | 36 | 43 | 49 | 55 | 59 | 63 | 68 | 69 | 72 | 76  | 78  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 59  | 28 | 36 | 43 | 49 | 54 | 57 | 63 | 67 | 68 | 70 | 76  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 60  | 28 | 36 | 43 | 49 | 53 | 57 | 61 | 64 | 67 | 69 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 61  | 26 | 35 | 42 | 48 | 52 | 56 | 59 | 63 | 66 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 62  | 26 | 33 | 41 | 47 | 51 | 55 | 58 | 62 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 63  | 25 | 33 | 41 | 46 | 51 | 55 | 57 | 80 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 64  | 25 | 33 | 40 | 45 | 50 | 53 | 80 | 80 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 65  | 24 | 32 | 39 | 44 | 49 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 66  | 24 | 32 | 39 | 44 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 67  | 24 | 32 | 39 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 68  | 24 | 32 | 68 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 69  | 24 | 64 | 68 | 72 | 72 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 70  | 60 | 60 | 64 | 68 | 68 | 72 | 75 | 75 | 80 | 80 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

**Female, Smoker**  
**Duration**

Issue

| Age | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20+ |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 71  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 72  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 73  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 74  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 75  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 76  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 80  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 77  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 75  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 78  | 60  | 60  | 64  | 68  | 68  | 72  | 75  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 79  | 60  | 60  | 64  | 68  | 68  | 72  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 80  | 60  | 60  | 64  | 68  | 68  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 81  | 60  | 60  | 64  | 68  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 82  | 60  | 60  | 64  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 83  | 60  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 84  | 60  | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 85+ | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

CHAPTER 45-10-02

**45-10-02-03. Registration fee.**

1. An annual registration fee is due and payable on July 1, 1991, and on July first of each successive year thereafter. Registration fees must be paid from April 1991, or from the date a new tank was installed if it was after April 1991, to be in compliance with this section. The period of registration must run from July first to June thirtieth to coincide with the fiscal year of North Dakota.
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change. However, a prorated registration fee is required for the installation of an additional tank within any registration year.
3. In the event the legislative assembly may make any alterations or modifications of the registration fee, the administrator shall prorate the annual registration fee accordingly.

**History:** Effective November 25, 1991; amended effective June 1, 1994; January 1, 2000.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, § 17

CHAPTER 45-11-01

45-11-01-01. Required disclaimers notice to policy owners.

1:--General--notice--of--policy--coverage:--The A document,--required under--subsection-2--of--North--Dakota--Century--Code--section 26:1-38:1-16--to--be--delivered--to--policyholders--of--policies--or contracts--described--in--subsection-2--of--North--Dakota--Century Code--section-26:1-38:1-01,--related--to--the--description--of--that describes the general purposes and current limitations of the North Dakota life and health insurance guaranty association, as required by subsections 2 and 3 of section 26.1-38.1-16 of the North Dakota Century Code must be in the same form and contain the language printed in the Notice--Concerning--Coverage Limitations--and--Exclusions--Under--the--North--Dakota--Life--and Health--Insurance--Guaranty--Association--Act notice shown in exhibit A.

2:--Notice--of--noncoverage:--Each--notice--which--is--delivered--to--a policyholder--by--an--insurer--or--agent--pursuant--to--and--required to--be--delivered--by--subsection-4--of--North--Dakota--Century--Code section-26:1-38:1-16--must--be--in--the--same--form--and--contain--the language--printed--in--the--Notice--Concerning--Coverage--Limitations and--Exclusions--Under--the--North--Dakota--Life--and--Health Insurance--Guaranty--Association--Act--shown--in--exhibit--A:

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

**General Authority:** NDCC 26.1-38.1-16

**Law Implemented:** NDCC 26.1-38.1-16

**NOTICE CONCERNING COVERAGE,  
LIMITATIONS AND EXCLUSIONS UNDER THE  
NORTH DAKOTA LIFE AND HEALTH INSURANCE GUARANTY  
ASSOCIATION ACT**

A resident of North Dakota who purchases life insurance, annuities, or accident and health insurance should know that an insurance company licensed in this state to write these types of insurance is a member of the North Dakota Life and Health Insurance Guaranty Association. The purpose of this association is to assure that a policy owner will be protected, within statutory limits, if a member insurer becomes financially unable to meet its obligations. If this should happen, the guaranty association will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the guaranty association is not unlimited, however. And, as noted in the box below, this protection is not a substitute for your care in selecting a company that is well-managed and financially stable.

**The North Dakota Life and Health Insurance Guaranty Association may not provide coverage for this policy. If coverage is provided, it may be subject to substantial limitations or exclusions, and require continued residency in North Dakota. You should not rely on coverage by the North Dakota Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy.**

**Coverage is NOT provided for your policy or any portion of it that is not guaranteed by the insurer or for which you have assumed the risk, such as a variable contract sold by prospectus or self-funded plans.**

**Your insurance company or its agent is required by law to give or send you this notice. However, your insurance company and its agent are prohibited by law from using the existence of the guaranty association to induce you to purchase any kind of insurance policy.**

[Insurer's Name]

[Address]

[Telephone Number]

**The North Dakota Life and Health Insurance Guaranty Association  
P.O. Box 8875  
Fargo, North Dakota 58109-8875**

**State of North Dakota Department of Insurance  
600 East Boulevard Avenue, Dept. 401  
Bismarck, North Dakota 58505**

The state law that provides for this safety-net coverage is called the North Dakota Life and Health Insurance Guaranty Association Act. On the back of this page is a brief summary of this law's coverages, exclusions, and limits. This summary does not cover all provisions of the law; nor does it in any way change your rights or obligations under the act or the rights or obligations of the guaranty association.

(please turn to back of page)

## **COVERAGE**

Generally, an individual will be protected by the life and health insurance guaranty association if the individual lives in North Dakota and holds a life or health insurance contract or annuity contract, or if the insured is insured under a group insurance contract issued by a member insurer. A beneficiary, payee, or assignee of an insured person is protected as well, even if a nonresident of North Dakota.

## **EXCLUSIONS FROM COVERAGE**

However, a person holding a policy is not protected by this association if:

- the individual is eligible for protection under the laws of another state (this may occur when the insolvent insurer was incorporated in another state whose guaranty association protects insureds who live outside that state);
- the insurer was not authorized to do business in this state;
- the policy is issued by an organization which is not a member of the North Dakota Life and Health Insurance Guaranty Association. Health maintenance organizations, fraternal benefit societies, and the Comprehensive Health Association of North Dakota are not members of the guaranty association.

The association does not provide coverage for:

- a policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus;
- a policy of reinsurance (unless an assumption certificate was issued);
- an interest rate yield that exceeds an average rate;
- a dividend;
- a credit given in connection with the administration of a policy by a group contractholder;
- an employer's plan to the extent that it is self-funded (that is, not insured by an insurance company, even if an insurance company administers the plan).

## **LIMITS ON AMOUNT OF COVERAGE**

The act also limits the amount the association is obligated to pay. The association cannot pay more than what the insurance company would owe under a policy or contract. Also, for any one insured life, the association will pay a maximum of \$300,000 - no matter how many policies and contracts were in force with the same company, even if the policies provided different types of coverages. Within this overall \$300,000 limit, the association will not pay more than \$100,000 in cash surrender values, \$100,000 in health insurance benefits, \$100,000 in present value of annuities, or \$300,000 in life insurance death benefits - again, no matter how many policies and contracts there were with the same company, and no matter how many different types of coverages.

*Note to benefit plan trustees or other holders of unallocated annuities (GICs, DACs, etc.) covered by the act: for unallocated annuities that fund governmental retirement plans under §§ 401(k), 403(b), or 457 of the Internal Revenue Code, the limit is \$100,000 in present value of annuity benefits including net cash surrender and net cash withdrawal per participating individual. In no event shall the association be liable to spend more than \$300,000 in the aggregate per individual. For covered unallocated annuities that fund other plans, a special limit of \$5,000,000 applies to each contractholder, regardless of the number of contracts held with the same company or number of persons covered. In all cases the contract limits also apply.*

## **COMPLAINTS AND COMPANY FINANCIAL INFORMATION**

A written complaint to allege a violation of any provision of the Life and Health Insurance Guaranty Association Act must be filed with the North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck, North Dakota 58505; telephone - (701) 328-2440. Financial information for an insurance company, if the information is not proprietary, is available at the same address and telephone number.

## CHAPTER 45-12-01

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

1. "Alteration" means a structural modification of or a departure from an original or existing construction.
2. "Apartments" means all multiple dwellings, including condominiums.
3. "Approved" means approved by the commissioner.
4. "A.S.M.E. Code" means the Boiler and Pressure Vessel Construction Code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1 and 2, and 3), and IX, 1995 and X, 1998 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American Society of Mechanical Engineers Code is on file at the office of the boiler inspection program. The American Society of Mechanical Engineers Code may be obtained from the American society of mechanical engineers headquarters at ~~345--east--forty-seventh street~~ 3 park avenue, New York, New York ~~10017~~ 10016-5990.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for heating or vaporizing liquids other than water ~~where~~ when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.
9. "Commissioner" means the insurance commissioner ~~of insurance~~ of North Dakota.

10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.
11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.
12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the National Board Inspection Code.

21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
  - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.
  - b. Twenty square feet [1.86 square meter] heating surface.
  - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
  - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American Society of Mechanical Engineers Code.
23. "National Board Inspection Code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The National Board Inspection Code, 1995 1998 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national

board and are employed by a self-insured corporation making their own inspections.

29. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.
33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.
34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [ $2.11 \times 10^5$  to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
35. "Special inspector" means an inspector regularly employed by an insurance company authorized to insure against loss from explosion of boilers in this state or an inspector who has passed the national board examination and is employed by a self-insured corporation.
36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.
37. "State of North Dakota Boiler Construction Code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American Society of Mechanical Engineers Code.
38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

**History:** Effective June 1, 1994; amended effective April 1, 1996;  
January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-02

**45-12-02-07.** Operating without an a certificate of inspection certificate. The owner or user who causes a boiler to be operated after inspections without possessing a valid certificate of inspection is subject to the penalty under North Dakota Century Code section 26.1-22.1-11.

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-08.** Validity of inspection certificate for boilers. An ~~inspection~~ A certificate of inspection, issued in accordance with this article, is valid until expiration (~~not more than twelve months for power boilers and twenty-four months for low pressure, hot water supply and heating boilers~~) unless some defect or condition affecting the safety of the boiler is disclosed and if all inspection fees have been paid. (~~Exception:--Steam traction engines and certain boilers over one hundred thousand pounds of steam per hour as allowed by North Dakota Century Code sections 26.1-22.1-07 and 26.1-22.1-10.~~) A certificate of inspection is valid for the following time periods:

1. Thirty-six months for power boilers over one hundred thousand pounds [45359.24 kilograms] of steam per hour as allowed by North Dakota Century Code section 26.1-22.1-07.
2. Twenty-four months for steam traction engines.
3. Twelve months for all other power boilers.
4. Thirty-six months for hot water heating and hot water supply boilers located in apartments and condominiums.
5. Twenty-four months for all other hot water heating, hot water supply, and low pressure boilers.

A certificate issued for a boiler inspected by a special inspector is valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company or self-insured corporation. A two-month grace period must be extended for any certificate.

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

CHAPTER 45-12-03

45-12-03-01.1. Boiler inspection fees. The following will be charged for boiler inspections:

1. High pressure boilers.

a. Internal inspections.

Fee

|  |         |                |
|--|---------|----------------|
| - 50 square feet [4.65 square meters] or less of heating surface                                   | \$40:00 | <u>\$50.00</u> |
| - Over 50 square feet [4.65 square meters] and not over 500 square feet [46.45 square meters]      | 50:00   | <u>60.00</u>   |
| - Over 500 square feet [46.45 square meters] and not over 4,000 square feet [371.61 square meters] | 60:00   | <u>70.00</u>   |
| - Over 4,000 square feet [371.61 square meters] of heating surface                                 | 70:00   | <u>80.00</u>   |

b. External inspections.

|   |         |                |
|---|---------|----------------|
| - 50 square feet [4.65 square meters] of heating surface or less; 100KW or less | \$30:00 | <u>\$35.00</u> |
| - Over 50 square feet [4.65 square meters] of heating surface; over 100 KW      | 40:00   | <u>45.00</u>   |

2. Low pressure boilers.

a. Internal inspections.

|                  |         |                |
|------------------|---------|----------------|
| - Without manway | \$40:00 | <u>\$50.00</u> |
| - With manway    | 50:00   | <u>60.00</u>   |

b. External inspections.

|  |         |                |
|--|---------|----------------|
| - Hot water heat and low pressure steam  | \$30:00 | <u>\$35.00</u> |
| - Hot water supply   | 15:00   | <u>20.00</u>   |
| - Additional boilers at same account for same day inspection (account = same owner, management firm, user, etc.) | 20:00   | <u>25.00</u>   |

3. Steam traction engines.

|                               |         |                |
|-------------------------------|---------|----------------|
| - Internal                    | \$40:00 | <u>\$45.00</u> |
| - External                    | 35:00   | <u>40.00</u>   |
| - Hydrostatic test            | 45:00   | <u>50.00</u>   |
| - Ultrasonic survey, per hour | 30:00   | <u>35.00</u>   |

4. Multiple boiler fee cap. Inspection fees for the same account, per day, must be as stated in this fee schedule, or

at the flat rate of ~~two--hundred--fifty~~ three hundred twenty-five dollars, whichever is less. This is in addition to the state certificate fee noted in subsection 5.

5. State certificate fee,  
per certificate \$15.00

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-03-06. Hydrostatic pressure tests.** A hydrostatic pressure test, when applied to boilers of riveted or welded construction, except locomotive boilers, may not exceed one and one-half times the maximum allowable working pressure. Hydrostatic pressure applied to locomotive boilers may not exceed one and one-quarter times the maximum allowable working pressure. During the hydrostatic pressure test, the safety valve or valves must be removed or each valve disk must be held down by means of a testing clamp and not by applying the additional load to the spring with the compression screw. The minimum temperature of the water used to apply a hydrostatic test must not be less than seventy sixty degrees Fahrenheit [25 15.6 degrees Celsius], nor shall it exceed one hundred twenty degrees Fahrenheit [49.3 degrees Celsius]. (Note: For all cases involving the question of tightness, the pressure may be equal to the release pressure of the safety valve or valves having the lowest release setting.)

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-03-07. Automatic low-water fuel cutoff or water-feeding device.**

1. Each automatically fired steam or vapor system boiler must be equipped with an automatic low-water cutoff located to automatically cut off the fuel supply when the surface of the water falls to the lowest safe waterline. Each For other than electric boilers, each automatically fired high pressure boiler must be equipped with at least two low-water fuel cutoffs, one of which must be readily testable. A high pressure boiler regularly attended by a full-time operator is not considered as automatically fired, and is not required to be equipped with low-water fuel cutoffs. For other than electric boilers, the primary low-water fuel cutoff for low pressure steam boilers must be a float type that can be readily tested.
2. If a water-feeding device is installed, it must be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber and located to supply

requisite feedwater. The lowest safe waterline should not be lower than the lowest visible part of the water glass.

3. Such fuel or feedwater control device may be attached directly to a boiler or to the tapped openings provided for attaching a water glass directly to a boiler, provided that for low pressure boilers such connections from the boiler are nonferrous tees or Y's  $\frac{1}{2}$  Ys not less than one-half-inch [12.7-millimeter] pipe size between the boiler and the water glass, so that the water glass is attached directly and as close as possible to the boiler; the straightway tapping of the Y or tee to take the water glass fittings, and the side outlet of the Y or tee to take the fuel cutoff or water-feeding device. The ends of all nipples must be reamed to full-size diameter.
4. Designs embodying a float and float bowl must have a vertical straightaway drainpipe at the lowest point in the water equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

#### **45-12-03-26. Inspection of boilers.**

1. Each boiler used or proposed to be used within this state, except boilers exempt in North Dakota Century Code section 26.1-22.1-06, must be thoroughly inspected as to their construction, installation, condition, and operation as follows:
  - a. Power boilers must be inspected annually both internally while not under pressure and externally while under pressure. However, any power boiler or steam generator, the operation of which is an integral part of or a necessary adjunct to other continuous processing operations, must be inspected internally at such intervals as are permitted by the shutting down of the processing operation. The chief boiler inspector may provide for extension of time between internal inspections, but an external inspection must be made, and report submitted, for purposes of issuing a certificate. In all other instances the certificate inspection must be an internal inspection when construction permits.
  - b. Power boilers of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, which comply with subsection 2 of North Dakota Century Code section 26.1-22.1-07, must be inspected at least once

every thirty-six months internally while not under pressure and at least once every twelve months externally while under pressure.

- c. Steam traction engines must be inspected at least once every twenty-four months. Inspections must alternate between internal inspections and hydrostatic tests. External inspections, made with the boiler under pressure, will be made at the discretion of the inspector.
  - d. Low pressure steam boilers must be inspected annually. Low pressure steam boilers of steel construction must be inspected alternately internally and externally. The issuance of a certificate must normally be based on the internal inspection.
  - e. Hot water heating and hot water supply boilers must be inspected biennially unless they are located in a nursing home, school, nursery school, or kindergarten, in which case they must be inspected annually. Hot water heating and hot water supply boilers located in apartments and condominiums must be inspected triennially. Internal inspections will be required when deemed necessary by the inspector.
  - f. A grace period of two months beyond the period specified in the above subdivisions may elapse between inspections.
2. The only reports normally required by the chief boiler inspector will be reports of inspections made as a certificate inspection. Certificate inspections must be made during the period of thirty days prior to and thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be documented in such a manner that reports of these inspections may be furnished to the state insurance department upon the request of the chief boiler inspector. The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.
  3. The inspections required under this section must be made by the chief boiler inspector, or by a deputy inspector, or by a special inspector provided for in this article.
  4. If at any time a hydrostatic test is deemed necessary by the inspector, it must be made by the owner or user in the presence of, and under the supervision of the inspector, and must be approved by the inspector.
  5. Cast iron boilers must be considered as boilers that do not lend themselves to internal inspections. Internal inspections

of electric boilers must be made when deemed necessary by the inspector.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-09

### 45-12-09-11. Feedwater connections.

1. Feedwater connections must be independent of any water gauge connections and be made to the condensate return pipe or reservoir of the condensate return tank.
2. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent connection may not discharge directly against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment may not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, blowoff, water column, water gauge glass, pressure gauge, or temperature gauge.
3. When there is more than one boiler connected to a system, each boiler must have an independent feedwater line.
4. There must be a stop valve and a check valve in the feedwater line at the boiler. For hot water heating boilers, the check valve must be a backflow preventer approved by the State Plumbing Code, 1990 edition, 1994 1996 addenda.
5. Hot water heating boilers, not equipped with an approved low-water fuel cutoff, must be equipped with an automatic feeding device or pressure reducing valve method of feeding, in addition to a manual bypass capable of feeding the boiler at a pressure of six percent above safety relief valve setting.

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

### 45-12-09-12. Pressure or altitude gauges.

1. Each hot water boiler must have a pressure or altitude gauge connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock must be parallel to the pipe in which it is located when the cock is open.
2. The scale on the dial of the pressure or altitude gauge must be graduated to not less than one and one-half nor more than three and one-half times the pressure at which the safety relief valve is set. The gauge must be provided with

effective stops for the indicating pointer at the zero point and at the maximum pressure point.

3. Piping or tubing for pressure or altitude gauge connections must be of nonferrous metal when smaller than one-inch [25.4-millimeter] pipe size.

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-09-14. Temperature control.** Each automatically fired hot water boiler must be protected from over temperature by two temperature-operated controls.

1. Each individual automatically fired water boiler must have a safety limit control that will cut off the fuel supply to prevent water temperature from exceeding the maximum allowable temperature of ~~two-hundred-fifty-degrees-Fahrenheit~~ ~~{121-1 Celsius}~~ at the boiler outlet. The water temperature safety control must be constructed to prevent a temperature setting above ~~two-hundred-fifty-degrees-Fahrenheit~~ ~~{121-1 Celsius}~~ the maximum allowable temperature.
2. Each individual hot water boiler or each system of commonly connected boilers without intervening valves must have a control that will cut off the fuel supply when the water temperature reaches an operating limit, which must be less than the maximum allowable temperature.

**History:** Effective June 1, 1994; amended effective January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-10

**45-12-10-01. Construction and installation standards - Exceptions.** Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, section VIII, division 1 or 2, or 3, 1998 edition, and bear the "U" stamp as proof of such construction.

Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.

The requirements of this section apply to all pressure vessels within the scope of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, section VIII, divisions division 1 and 2, 1995 or 3, 1998 edition, with these exceptions:

1. Pressure vessels under federal control.
2. Pressure vessels that do not exceed four cubic feet [thirty United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.
3. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.
4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines.

Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, 1998 edition.

Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operation operating condition.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-10-02. Application of standards - Repairs.**

1. These rules apply only to new construction, except as noted below:
  - a. Reinstalled pressure vessels must meet the rules for new construction. Exception: National board registration is required only for those vessels ordered and constructed after November 1, 1987.
  - b. Repairs to unfired pressure vessels and to safety and safety relief valves for those vessels:
    - (1) Repairs to safety valves and safety relief valves must be such that valve function is not impaired and the repaired valve will perform to the standards for which it was originally constructed. It is recommended that these repairs be made by a firm in possession of a valid "VR" certificate of authorization from the national board of boiler and pressure vessel inspectors.
    - (2) Repairs to unfired pressure vessels must be such that vessels repaired will be returned to a safe and satisfactory operating condition, provided there is not deviation from the original design. It is recommended that these repairs be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
    - (3) The National Board Inspection Code (ANSI/NB-23, 1995 1998 edition) and the American Petroleum Institute Code (ANSI/API-510, 1992 1997 edition) cover repair and alteration procedures. ANSI/API-510 may be used to cover the maintenance inspection, repair, alteration, and rerating procedure for pressure vessels used by the petroleum and chemical process industries. It is intended that ANSI/NB-23 cover installations other than those covered by ANSI/API-510.
  - c. Alterations to unfired pressure vessels:
    - (1) Alterations, as defined in ANSI/NB-23, must be made by a national board "R" certificate holder.
    - (2) Alterations may also be made by an organization operating under the provisions of ANSI/API-510, provided the alteration is within the scope of ANSI/API-510.

**History:** Effective June 1, 1994; amended effective April 1, 1996;  
January 1, 2000.  
**General Authority:** NDCC 26.1-22.1-14  
**Law Implemented:** NDCC 26.1-22.1-14

**STAFF COMMENT:** Article 45-13 contains all new material and is not underscored so as to improve readability.

**ARTICLE 45-13**

**LINES OF INSURANCE**

Chapter  
45-13-01            Lines of Insurance

**CHAPTER 45-13-01  
LINES OF INSURANCE**

Section  
45-13-01-01            Lines of Insurance  
45-13-01-02            Product Types - Definition  
45-13-01-03            Products Relating to More Than One Line of  
                                 Insurance - Combination Products  
45-13-01-04            Prepaid Legal Service

**45-13-01-01. Lines of insurance.** An insurance company or an insurance agent may apply to engage in insurance activities in one or more of the following lines of insurance:

1. Life and annuity.
2. Accident and health.
3. Property.
4. Casualty.
5. Variable life and annuity.

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

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

**Law Implemented:** NDCC 26.1-05-02, 26.1-12-11, 26.1-26-11

**45-13-01-02. Product types - Definition.** Each line of insurance is defined to include the following products:

1. Life and annuity includes:

Annuity/institutional  
investment  
Credit life  
Deferred annuity  
Endowment

Equity/interest indexed annuity  
Equity/interest indexed  
universal life  
Structured settlement  
annuity

|  |                |
|--|----------------|
| Guaranteed investment<br>contract/pension plan | Term life      |
| Immediate annuity                              | Universal life |
|  | Whole life     |

and similar products relating to life and annuity matters.

2. Accident and health includes:

|  |                             |
|--|-----------------------------|
| Accident   | Hospital indemnity          |
| Accidental death   | Hospital and surgical       |
| Accidental death and dismemberment   | Intensive care              |
| Cancer   | Involuntary unemployment    |
| Civilian health and medical program<br>of the uniformed services<br>supplement | Long-term care              |
| Credit disability  | Major medical               |
| Critical illness   | Managed care/excess loss    |
| Dental   | Medical expense             |
| Disability income  | Medicare supplement         |
| Excess loss  | Nursing home                |
| Family leave   | Organ and tissue transplant |
| Human immunodeficiency virus<br>indemnity                                      | Prescription drug           |
| Home health care   | Specified disease           |
|  | Sickness                    |
|  | Surgical expense            |
|  | Vision                      |

and similar products relating to accident and health matters.

3. Property includes:

|   |                         |
|---|-------------------------|
| Aircraft cargo                            | Dwelling                |
| Aircraft hull                             | Earthquake              |
| Allied lines                              | Extended coverages      |
| Auto commercial physical damage           | Fire                    |
| Auto private passenger physical<br>damage | Fire and allied lines   |
| Baggage                                   | Flood                   |
| Boiler and machinery                      | Force placed            |
| Burglary and robbery                      | Glass                   |
| Business income                           | Lenders collateral      |
| Cargo                                     | Livestock               |
| Commercial inland marine                  | Money and securities    |
| Commercial multi-peril                    | Marine cargo            |
| Commercial property                       | Marine hull             |
| Credit                                    | Mortgage guarantee      |
| Credit card                               | Multi-peril crop        |
| Credit property                           | Ocean marine            |
| Crime                                     | Personal floater        |
| Crop                                      | Personal inland marine  |
| Crop hail                                 | Pet                     |
| Crop supplements                          | Rain                    |
| Difference in conditions                  | Theft                   |
|   | Vandalism               |
|   | Vendors single interest |

and similar products relating to property matters.

4. Casualty includes:

|                                  |                             |
|----------------------------------|-----------------------------|
| Aircraft liability               | Medical malpractice         |
| Asbestos abatement               | Mechanical breakdown        |
| Auto commercial liability        | Personal excess liability   |
| Auto private passenger liability | Personal umbrella liability |
| Auto warranty contract           | Personal liability          |
| Bail bonds                       | Pollution liability         |
| Bonds                            | Premises and operations     |
| Commercial excess liability      | Prepaid legal service       |
| Commercial general liability     | Product liability           |
| Commercial umbrella liability    | Product recall              |
| Contractual liability            | Products and completed      |
| Directors and officers           | operations                  |
| Design professional              | Professional liability      |
| Employers liability              | Owners and contractors      |
| Environmental impairment         | Railroad protective         |
| Errors and omissions             | Ransom and extortion        |
| Fidelity bonds                   | Stop gap                    |
| Fidelity insurance               | Stop-loss liability         |
| Home warranty                    | Surety                      |
| Legal expense                    | Title                       |
| Legal malpractice                | Vehicle service contracts   |
| Liquor and dram shop liability   | Workers' compensation       |

and similar products relating to casualty matters.

5. Variable life and annuity includes:

Variable deferred annuity  
Variable immediate annuity  
Variable group annuity/pension plan  
Variable life

and similar products relating to variable life and annuity matters.

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

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

**Law Implemented:** NDCC 26.1-05-02.1

**45-13-01-03. Products relating to more than one line of insurance - Combination products.** Certain insurance products may involve two or more lines of insurance. A company marketing a combination product must carry authorization for each of the respective lines of insurance. Products involving a combination of property and casualty lines of insurance include aircraft, auto commercial, auto private passenger, boat owners, business owners, condominium owners, farm owners, garage keepers, homeowners, mobile homeowners, special multi-peril, commercial multi-peril package, and tenants. Products involving a combination of life and annuity, and accident and health lines of insurance include multi-line credit, multi-line life and health, and multi-line association and employer. Products involving a combination of property and casualty, and accident and health lines of insurance include multi-line association and employer, travel, and multi-line credit.

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

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

**Law Implemented:** NDCC 26.1-05-02.1, 26.1-12-11.1, 26.1-26-11.1

**45-13-01-04. Prepaid legal service.** An insurance company that markets prepaid legal services must be licensed as a prepaid legal service organization and comply with chapter 26.1-19 of the North Dakota Century Code before transacting business in this state.

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

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

**Law Implemented:** NDCC 26.1-19

FEBRUARY 2000

**STAFF COMMENT:** Chapter 45-03-21 contains all new material and is not underscored so as to improve readability.

**CHAPTER 45-03-21  
DEMUTUALIZATION**

|             |  |
|-------------|--|
| Section     |  |
| 45-03-21-01 | Definitions  |
| 45-03-21-02 | Authority to Convert                                 |
| 45-03-21-03 | Board of Directors Approval                          |
| 45-03-21-04 | Petition to Convert                                  |
| 45-03-21-05 | Elements of the Conversion Plan                      |
| 45-03-21-06 | Appointment of Experts                               |
| 45-03-21-07 | Hearing  |
| 45-03-21-08 | Action by Commissioner                               |
| 45-03-21-09 | Member Approval                                      |
| 45-03-21-10 | Consideration for Promoting Conversion<br>Prohibited |
| 45-03-21-11 | Directors and Officers                               |
| 45-03-21-12 | Stock Acquisition - Limitations                      |
| 45-03-21-13 | Action After Demutualization                         |
| 45-03-21-14 | Amendment  |
| 45-03-21-15 | Competitive Purpose                                  |

**45-03-21-01. Definitions.** For the purposes of this chapter, the following definitions shall apply:

1. "Commissioner" means the insurance commissioner.
2. "Converted insurer" means a domestic mutual insurer that has completed a demutualization subject to this chapter.

3. "Converting insurer" means a domestic mutual insurer that has filed, or announced its intent to file, an application for demutualization under this chapter.
4. "Demutualization" means any transaction as part of which:
  - a. A domestic mutual insurer is converted into a stock corporation;
  - b. A substantial portion of the ownership of a domestic mutual insurer is acquired by, or merged with, another entity that is not a mutual insurer; or
  - c. The ownership interest of the members in a domestic mutual insurer is reduced substantially or eliminated.
5. "Eligible member" means a person who, at any time during the one year preceding the record date, has been the owner of a policy of insurance issued by the converting insurer. Unless otherwise provided in the conversion plan and approved by the commissioner, a person insured under a certificate issued under a group policy is an eligible member.
6. "Equitable share" means the portion allocated to an eligible member of the securities or other consideration of the converting insurer referred to in subsection 3 of section 45-03-21-05, such allocation to be made in accordance with the provisions of subsection 4 of section 45-03-21-05.
7. "Member" means a person who is the holder of a policy or contract of insurance issued by the converting insurer, including the holder of a certificate issued under a group insurance policy. The term "member" does not include a dependent of a certificate holder or policyholder who is insured by the converting insurer solely by virtue of being such a dependent nor does it include the holder of a contract issued by the converting insurer under which there is not a substantial assumption of risk, such as a contract for administrative services only.
8. "Membership interest" means all rights to which members of the converting insurer are entitled under applicable law and under the converting insurer's bylaws, articles of incorporation, insurance policies, or other contracts, including the right to vote and to participate in any distribution of earnings or surplus, whether or not incident to the company's dissolution or liquidation.
9. "Mutual insurance holding company" means a company formed under North Dakota Century Code section 26.1-12.1-02.

10. "Plan of conversion" or "conversion plan" means a plan to engage or participate in a demutualization which is subject to this chapter.
11. "Record date" means the date on which the converting insurer's board of directors adopts a plan of conversion or some other date specified as the record date in the plan of conversion and approved by the commissioner.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-02. Authority to convert.** A domestic mutual insurer authorized to do business in this state may not take part in a demutualization unless the demutualization has first been approved by the commissioner in accordance with this chapter. Any domestic mutual insurer may submit to the commissioner a petition to engage in a demutualization without reincorporation, pursuant to the requirements of this chapter. This chapter does not apply to a reorganization of a mutual insurer into a mutual holding company structure, pursuant to North Dakota Century Code chapter 26.1-12.1.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-03. Board of directors approval.** A plan of conversion under this chapter must be adopted by no less than a majority of the board of directors of the converting insurer unless otherwise provided in the articles of incorporation or bylaws.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-04. Petition to convert.** A petition to engage in a demutualization pursuant to this chapter must be filed with the commissioner and must contain the following:

1. The proposed plan of conversion;
2. The proposed articles of incorporation and bylaws of the converted insurer;
3. A list of the proposed officers and directors of the converted insurer, stating each of those individual's principal occupation, all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years and specifying

- any other relationship that will exist between such individual and the converting insurer;
4. A narrative explanation of the reasons for, and purposes of, the proposed demutualization, including an analysis of alternative transactions considered;
  5. A description and analysis of the anticipated risks and benefits for the converting insurer associated with the proposed demutualization;
  6. A description and analysis of the anticipated risks and benefits for the insureds, eligible members, and other members of the converting insurer associated with the proposed demutualization;
  7. An explanation of the anticipated effect of the demutualization on the profitability, solvency, and market position of the converting insurer;
  8. An explanation of the anticipated tax implications of the proposed demutualization for the converting insurer and whether the demutualization would constitute a taxable event for its eligible members, insureds, and other members;
  9. An explanation of the anticipated effect of the demutualization on insurance coverages provided by the converting insurer, including the anticipated effect on the scope and costs of such coverages;
  10. The resolution of the board of directors of the converting insurer authorizing the demutualization, certified by the secretary of the company;
  11. Pro forma financial statements for the converted insurer, projecting its financial condition for the three years immediately following the demutualization;
  12. The proposed plan of operation for the converted insurer;
  13. A summary of the plan of conversion and any other materials that the converting insurer proposes to send to members and eligible members to seek their approval of the conversion plan;
  14. The proposed form of notice required pursuant to section 45-03-21-07 to members must include a reasonable description of all material terms of the conversion plan in order that the members may make an informed decision as to whether or not to vote in favor of approval of such conversion plan. Such notice must also be sent to eligible members in order that they may make an informed decision as to whether or not to participate in the hearing. The information provided to

members and eligible members in accordance with this section must also include a fair and adequate description of all risks and potential adverse consequences that may arise from the demutualization; and

15. Such additional information as the commissioner reasonably deems necessary to assure that the plan complies with the standards set forth in section 45-03-21-07.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-05. Elements of the conversion plan.** Any plan of conversion filed pursuant to this chapter must include at least all of the following:

1. Identification of the membership interests held or owned by the members of the converting insurer;
2. Identification of the class or classes of persons who have an ownership interest in the converting insurer as of the record date. If an ownership interest is held by any person who is not as of the record date an eligible member, the conversion plan must determine what percentage of the ownership interest in the converting insurer is held by eligible members in the aggregate, and what percentage of the ownership interest is held by each of any other classes of persons and by any other entity who holds such interest, such determinations to be made as of the record date;
3. A fair and reasonable formula, approved by the commissioner, for exchanging the equitable share of each eligible member for securities or other consideration, or both, of the converted insurer and the disposition of any unclaimed shares. Each eligible member must be entitled to receive in exchange for the eligible member's equitable share, without additional payment, consideration payable in voting common shares of the converted insurer or other consideration, or both. If the equitable share of the eligible member entitles the eligible member to receive a fractional share of stock, the eligible member must have the option to receive the value of the fractional share in cash or to purchase a full share by paying the balance in cash;
4. The allocation of the consideration mentioned in subsection 3 must take into account:
  - a. The value of the voting rights of each eligible member, if any;

- b. The estimated proportionate contribution of each class of participating policies and contracts of insurance to the aggregate consideration being given to eligible members; and
  - c. Such other factors that the commissioner finds must be included in order for the allocation to be fair and equitable to eligible members and other owners;
5. If the conversion plan of the converting insurer includes or contemplates a public or private offering of stock or other securities of the converted insurer:
- a. The number and characteristics of each class or type of share or other security to be authorized;
  - b. The maximum percentage of issued or outstanding stock or other securities to be sold;
  - c. A detailed description of the company's proposed capital structure;
  - d. The proposed method and timing of any such sale;
  - e. The anticipated effect of such sale on the value of the consideration distributed to eligible members in accordance with the conversion plan and this chapter; and
  - f. A description of how the board of directors anticipates eligible members would be treated in any such sale, including a description of any plans for initial sale of stock or other securities to third parties, the process to be used in offering the stock or other securities, and setting the initial sale price for the stock or other securities;
6. The manner in which the conversion plan, when completed, would provide for the converted insurer paid-in capital and surplus in an amount not less than the minimum paid-in capital and surplus required of a domestic stock insurer upon initial authorization to transact like kinds of insurance; and
7. A description of any plans by the converting insurer to provide any stock options or other financial incentives to any member of management or any director as part of, or following, the demutualization.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-06. Appointment of experts.** The commissioner may retain, at the converting insurer's expense, such qualified experts or advisors as the commissioner deems reasonably necessary to assist in the review of the conversion plan and the determination of the value of the converting insurer on the record date.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-07. Hearing.** The commissioner shall conduct a public hearing regarding a proposed demutualization within ninety days after submission of a complete petition to the commissioner. Notice of the hearing must be published in five newspapers, one of which must be a daily newspaper published at Bismarck, at least two weeks before the hearing on the petition. Notice shall be mailed by the converting insurer to each member and eligible member, accompanied by a copy of the plan of conversion, at least forty-five days prior to the hearing. At the hearing, the converting insurer, its members, eligible members, and any other person whose interests may be affected by the proposed conversion may present evidence, examine or cross-examine witnesses, and offer oral and written arguments and comments to the extent permitted by, and according to the procedure for adjudicative proceedings under, North Dakota Century Code chapter 28-32. The commissioner may approve the conversion of the plan if the commissioner finds the following:

1. The conversion plan is fair and equitable to the converting insurer, its members, and its eligible members;
2. The conversion plan does not violate the law;
3. The converted insurer, after the demutualization, will be able to satisfy the requirements for the issuance of a certificate of authority to write the line or lines of insurance for which it was licensed before the demutualization;
4. Upon demutualization, the paid-in capital and surplus of the converted insurer must be in an amount not less than the minimum paid-in capital and surplus required to organize a domestic stock insurance company;
5. The rights of every member in any policy of insurance of the converting insurer, excluding voting and dividend rights, if any, may not be adversely affected by the demutualization and must continue in full force in accordance with the terms of the policy of each such member;
6. The financial condition of the converted insurer would not be such as might jeopardize its financial stability or prejudice the interest of its policyholders and members;

7. The demutualization will not affect adversely access to health care by persons covered by any health insurance policies or contracts issued by the converting insurer;
8. The demutualization is not likely to be hazardous or prejudicial to the interests of the members, the insureds, or the public; and
9. A conversion plan affecting a nonprofit insurer or holding company makes adequate provision for the interest of the public in such insurer or holding company.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-08. Action by commissioner.** Within ninety days after the conclusion of the public hearing, the commissioner shall enter an order either approving, conditionally approving, or disapproving the plan. An approval or conditional approval of a conversion plan expires if the demutualization is not completed within one hundred eighty days after the approval or conditional approval unless the time for completion is extended at the commissioner's discretion. An order approving, or approving conditionally, a conversion plan under this chapter does not apply to a demutualization that becomes effective more than thirty days after the date of such order unless no later than five days prior to the date on which the demutualization shall become effective, but in no event any earlier than ten days before such date, the converting insurer shall file with the commissioner the following certifications:

1. A certification that all opinions, private letter rulings, revenue rulings, and other such matters relating to the material tax consequences of the demutualization remain in full force, true and correct as of the anticipated effective date except as expressly and fully noted in the certification.
2. A certification that there have been no material changes in the converting insurer's financial condition which would have a significant effect on any of the matters contained in the conversion plan or in the notices provided to members and eligible members pursuant to section 45-03-21-07.
3. If the commissioner's order recites any factual bases for approval, or for conditional approval, a certification that no such factual bases have changed materially since the date of the order.

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

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-09. Member approval.** Following the commissioner's order, the plan of conversion and the proposed amendments to the articles of incorporation must be submitted to vote of the converting insurer's members and must be approved by an affirmative vote of a majority of votes cast by no fewer than twenty-five percent of the converting insurer's members, who may vote in person or by proxy at a meeting held for that purpose. The meeting may be a regular or special meeting but must be held no earlier than ninety days before the effective date. Following the commissioner's approval, notice of a meeting for the purpose of voting on the plan and amendments must be provided by mail to each member entitled to vote in accordance with the articles of incorporation or bylaws of the converting insurer no earlier than ninety days and no later than thirty days before the date of the meeting. Each member entitled to vote may cast one vote unless provided otherwise in the articles of incorporation or bylaws of the converting insurer.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-10. Consideration for promoting conversion prohibited.** A director, officer, or employee of the converting insurer may not receive any fee, commission, or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting, or assisting in the demutualization except as set forth in the conversion plan approved by the commissioner. This provision may not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, actuaries, and other consultants for services performed in the independent practice of their professions, even though they may also be directors of the converting insurer.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-11. Directors and officers.** The directors and officers of the converting insurer shall serve the converted insurer until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the converted insurer.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-12. Stock acquisition - Limitations.** The converted insurer may not, for at least three years following the demutualization, repurchase any of its common shares except pursuant to a pro rata tender offer to all shareholders.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-13. Action after demutualization.** An administrative action or proceeding, pending at the time of the demutualization to which the converting insurer may be a party, may not be abated or discontinued by reason of such demutualization.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-14. Amendment.** A petition to engage in a demutualization filed pursuant to section 45-03-21-02 or a conversion plan governed by this chapter may be amended after it is first filed with the commissioner and is subject to the following provisions:

1. If the amendment is made after approval from the commissioner pursuant to section 45-03-21-08 but prior to member approval pursuant to section 45-03-21-09 and if the commissioner determines that the amendment will not affect adversely and materially the interest of the converting insurer or its members, the amendment must be approved in the same manner as the conversion plan in accordance with section 45-03-21-09.
2. If the amendment is made prior to approval by the commissioner pursuant to section 45-03-21-08 and after notice to members has been mailed, an amended notice is not required to be mailed to members if the commissioner determines that the amendment will not adversely and materially affect the interest of the converting insurer or its members.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**45-03-21-15. Competitive purpose.** A person or entity licensed or holding a certificate of authority to transact the business of insurance in the state of North Dakota may not use the possibility that a domestic mutual insurer may demutualize as an inducement to the sale of insurance or for any other competitive purposes.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 26.1-12-32  
**Law Implemented:** NDCC 26.1-12-32

**STAFF COMMENT:** Chapter 45-03-22 contains all new material and is not underscored so as to improve readability.

**CHAPTER 45-03-22  
MUTUAL INSURANCE HOLDING COMPANY ACT RULES**

|             |   |
|-------------|---|
| Section     |   |
| 45-03-22-01 | Definitions                                   |
| 45-03-22-02 | Purpose and Scope                             |
| 45-03-22-03 | General Rules                                 |
| 45-03-22-04 | Stock Offerings - Content of Application      |
| 45-03-22-05 | Stock Hearing                                 |
| 45-03-22-06 | Subsequent Offerings                          |
| 45-03-22-07 | Prohibited Practices                          |
| 45-03-22-08 | Reporting of Stock Ownership and Transactions |

**45-03-22-01. Definitions.** As used in this chapter:

1. "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.
2. "Commissioner" means the North Dakota insurance commissioner.
3. "Department" means the North Dakota insurance department.
4. "Domestic mutual insurance company" means an insurance company organized on a mutual plan and incorporated under the laws of North Dakota.
5. "Interested person" means:
  - a. An officer, director, partner, copartner, or employee of the mutual insurance holding company or its subsidiary or affiliates;
  - b. A member of the immediate family of any natural person who is an officer, director, partner, or employee of the mutual insurance holding company or its subsidiary or affiliates or who owns, controls, or holds with power to vote, directly or indirectly, five percent or more of the mutual insurance holding company's or its subsidiary's or affiliate's outstanding voting securities;
  - c. A person or partner or employee of any person who has acted as legal counsel for the person within the previous two years; or
  - d. A natural person whom the commissioner by order shall have determined to be an interested person by reason of having had, at any time within the last two years, a material

business or professional relationship with another person or with a principal executive officer of another person.

6. "Intermediate holding company" means a subsidiary holding company of a mutual insurance holding company or part of a holding company system that is controlled by a mutual insurance holding company pursuant to North Dakota Century Code chapter 26.1-12.1.
7. "Member of the immediate family" means a spouse, parent, spouse of a parent, child, spouse of a child, brother or sister, including step and adoptive relationships.
8. "Mutual insurance holding company" means a holding company organized on a mutual plan and incorporated under the laws of North Dakota, resulting from the reorganization of a domestic mutual insurance company pursuant to North Dakota Century Code chapter 26.1-12.1.
9. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to North Dakota Century Code chapter 26.1-12.1.
10. "Stock" means any security evidencing an equity interest in the issuing entity.
11. "Stock offering" means any proposed sale, exchange, transfer, or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock. For the purposes of these rules, "stock offering" does not mean:
  - a. An offering of preferred stock that is not convertible or exchangeable into common stock and which has no ordinary voting rights; or
  - b. A transfer of stock between any of the following:
    - (1) A mutual insurance holding company;
    - (2) An insurance company subsidiary of a mutual insurance holding company;
    - (3) An intermediate holding company subsidiary of a mutual insurance holding company; and
    - (4) An insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-02. Purpose and scope.** A mutual insurance holding company and its subsidiary shall comply with North Dakota Century Code chapters 26.1-05 and 26.1-10 and the terms of all other applicable statutes or rules, including statutes or rules regulating investments, material transactions, and changes in control.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-03. General rules.**

1. A merger or acquisition not subject to North Dakota Century Code chapter 26.1-12.1 involving a mutual insurance holding company must be approved by the commissioner pursuant to North Dakota Century Code chapter 26.1-07.
2. Each domestic mutual insurance holding company shall provide to the commissioner an audited annual statement based upon generally accepted accounting principles and statutory accounting principles by June first of each year.
3. Unless otherwise specified by the commissioner, the mutual insurance holding company's annual statement must include:
  - a. An income statement.
  - b. A balance sheet.
  - c. A cash flow statement.
  - d. An investment plan covering all assets.
  - e. A statement disclosing any intention or agreement to pledge, borrow against, alienate, hypothecate, or otherwise encumber the assets of the mutual insurance holding company.
  - f. Complete information on the composition and status of any closed block formed as a part of a plan of reorganization.
4. At least fifty percent of the net worth of a mutual insurance holding company as determined under generally accepted accounting principles must be invested in insurance company subsidiaries.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-04. Stock offerings - Content of application.**

1. A stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may not occur without the prior written approval of the commissioner secured through the application and hearing process under this chapter. An application for approval of a stock offering must contain the following:
  - a. A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.
  - b. The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, the intended date or range of dates for the offer, and the manner in which the offer is to be conducted.
  - c. A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.
  - d. The name of any underwriter, syndicate member, or placement agent involved and, if known, the name of each entity, person, or group of persons to whom the offering is to be made who will, as a result of the offering, directly or indirectly control five percent or more of the total outstanding class of shares. If any involved underwriter, syndicate member, or placement agent is a corporation, or other entity, the name of each member of its board of directors or equivalent management team, with the names of the offeror's board of directors, must be provided. A copy of any offering documents, including any filing with the securities and exchange commission or a state securities regulator, must be included in the application.
  - e. A description of any subscription rights to be afforded a member of the mutual insurance holding company.
  - f. A detailed description of all expenses projected to be incurred in connection with the offering.
  - g. A statement as to the intended use of the funds raised by the offering.
  - h. A description of any fee, commission, or other valuable consideration earned by a director, officer, agent, or employee of the mutual insurance holding company or its affiliates specifically for aiding, promoting, or

assisting in the structuring or placement of the offering. The commissioner may disallow any fee, commission, or other valuable consideration deemed to be unreasonable. This subdivision does not apply to the payment of reasonable fees and compensation to attorneys at law, accountants, actuaries, and investment bankers for services performed in the independent practice of their professions, even though the underwriters of such services are also directors of the mutual insurance holding company, its subsidiaries, or affiliates.

- i. A statement that the mutual insurance holding company, either directly or indirectly through an intermediate holding company of a mutual insurance holding company, shall retain ownership of at least a majority of the voting shares of the capital stock of the subsidiary stock insurance company as required by North Dakota Century Code section 26.1-12.1-02.
  - j. Such other information as the commissioner shall require.
2. An application for a stock offering must include the following provisions:
- a. A restriction prohibiting an officer, director, employee, or other interested person of the mutual insurance holding company or its subsidiaries or its affiliates from the purchase or ownership of a share of the offering or receipt of an option to or for the benefit of an officer, director, employee, or other interested person, for a period of at least six months following the conclusion of the offering. This subdivision does not limit the rights of an officer, director, or other interested person from exercising a subscription right generally accorded a member of the mutual insurance holding company, except that, pursuant to such subscription right, an officer, director, or other interested person of the mutual insurance holding company or its subsidiaries or affiliates may not purchase or own, in the aggregate, directly or indirectly, more than five percent of the securities offered in the offering for a period of at least six months following the conclusion of the offering.
  - b. A provision that an entity created under a plan of reorganization may issue more than one class of securities provided, however, that at all times a voting majority of each class must be held, directly or indirectly, by the mutual insurance holding company and, provided further,

that no class of common stock may receive a dividend or other right greater than the class held, directly or indirectly, in the mutual insurance holding company.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-05. Stock hearing.** The commissioner may hold a public hearing to consider an application for approval of a stock offering. Upon receipt of an application for approval of an offering that includes an initial stock offering, the commissioner may hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. If a hearing is held, the commissioner must publish notice of the hearing in at least one newspaper of general circulation in the state. The applicant must provide its policyholders with notice of the hearing at least twenty, but not more than sixty, days prior to the hearing by regular mail. The notice must be approved by the commissioner. Following the hearing, the commissioner may approve, conditionally approve, or deny the application.

1. The commissioner must approve the offering if the applicant demonstrates clearly that:
  - a. The offering complies with this chapter and other provisions of law;
  - b. The method for establishing the price of the offering is consistent with generally accepted market or industry practices; and
  - c. The plan and offering will not be unfair or contrary to the financial interests of the members of the mutual insurance holding company.
2. In determining whether the application and offering will not be unfair to or contrary to the financial interests of the members of the mutual insurance holding company, the commissioner may consider the following:
  - a. Whether the offering will dilute a current member's interest;
  - b. Whether the application provides a method whereby accumulated earnings, cash, or other nonoperating assets are distributed to or otherwise inure to the fair and equitable benefit of the eligible members, members, and new members;
  - c. Whether the offering will create a class of security holders with interests adverse to those of the members;

- d. Whether the application and offering require a member to pay additional funds to keep a membership interest;
- e. Whether the application and offering create an opportunity for the officers or directors of the mutual insurance holding company, its subsidiaries, or affiliates to enrich themselves at the expense of members;
- f. Whether the offering will diminish a policyholder's contractual rights; and
- g. Such other factors that the commissioner may deem necessary.

This section does not prohibit the filing of a registration statement with the securities and exchange commission.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-06. Subsequent offerings.** Notwithstanding the provisions of section 45-03-22-05, stock offerings that are not initial stock offerings must be approved by the commissioner and must be made in accordance with the following:

- 1. If an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company intends to make a stock offering that would be governed by the provisions of this section, then that entity must deliver to the commissioner, not less than thirty days prior to the offering, a notice of the planned offering which includes:
  - a. The total number of shares to be offered;
  - b. The intended date of sale;
  - c. A record of the trading price and volume of the security during the prior fifty-two weeks;
  - d. Evidence that, after the completion of the offering, the mutual insurance holding company will retain ownership of a majority of the voting shares of the capital stock of the reorganized insurer as required by North Dakota Century Code section 26.1-12.1-02; and
  - e. Such other information the commissioner may deem necessary.

2. Unless otherwise provided, the commissioner's approval of an offering expires one hundred eighty days after the date of the commissioner's order unless otherwise extended in writing by the commissioner.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-07. Prohibited practices.** The following practices are prohibited:

1. Borrowing funds by the mutual insurance holding company or its subsidiaries or affiliates from the mutual insurance holding company's subsidiary or affiliates to finance the purchase of a stock offering by the reorganized insurer.
2. Payment of a commission, special fee, or any other special payment or extraordinary compensation to an officer, director, interested person, or affiliate for arranging, promoting, aiding, or assisting in the reorganization of the mutual insurance holding company or for arranging, promoting, aiding, assisting, or participating in the structuring or placement of an offering of securities except as permitted by the commissioner.
3. Avoiding this chapter by entering into an understanding or agreement transferring a legal or beneficial ownership of voting securities to another person.
4. The publication of a prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant, may not contain a representation that the commissioner's approval of an offering constitutes an endorsement of the price, price range, fairness, suitability, or any other information or matter relating to the offered securities or arising from the offering. The front of the prospectus must contain in boldface type a statement that the commissioner's approval of an offering does not constitute an endorsement of the price, price range, fairness, suitability, or any other information or matter.

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

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

**Law Implemented:** NDCC 26.1-12.1

**45-03-22-08. Reporting of stock ownership and transactions.** A director or officer of a mutual insurance holding company, its subsidiary, or affiliate who acquires directly or indirectly the beneficial ownership of any security issued by any member of the mutual

insurance holding company system, within fifteen days following the transaction, shall file with the commissioner a statement of the transaction on a form prescribed by the commissioner.

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

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

**Law Implemented:** NDCC 26.1-12.1



**TITLE 48**  
**Board of Animal Health**



FEBRUARY 2000

CHAPTER 48-12-01

**48-12-01-03. Permit and license requirements.** All nontraditional livestock premises must be licensed and comply with the administrative rules of the board and applicable statutes. Licenses are not required for categories 1 and 2. An owner of category 2 species must comply with all health requirements as set forth in subdivisions e and f of subsection 1.

1. Category 3, 4, or 5 nontraditional livestock may be imported into North Dakota only after the owner obtains all of the following:
  - a. An importation permit from the board.
  - b. A North Dakota nontraditional livestock license from the board which is valid for the species to be imported or possessed. The license fee is five dollars for each game bird species and ten dollars for all other species. The maximum annual fee for a person holding more than one bird species license is twenty-five dollars. The maximum annual fee for a person holding more than one nonbird species license is seventy-five dollars.
  - c. Genetic testing for purity is required for all elk or elk hybrids prior to entry into zone 1 or 2, as those zones are described in subdivision c of subsection 7. Only genetically pure elk will be allowed in zone 1 or 2.
  - d. An animal may not be imported, without approval from the board, if the animal originated in a herd that has been quarantined for a reportable disease.

e. An examination by an accredited veterinarian accompanied by an approved certificate of veterinary inspection. Minimum specific disease test results and health statements that must be included on a certificate of veterinary inspection include:

(1) Animals in the shipment must be tested for any diseases prescribed by the board.

(a) Tuberculosis.

[1] Cervidae - all animals in the shipment must be tested negative within thirty to ninety days and the entire herd of origin within twelve months using the single strength cervical test, or if originating from an accredited free herd, only the animals in the shipment must be tested; or follow uniform method and rules and guidelines for the control of tuberculosis in cervidae as published by USDA/APHIS.

[2] Other species - use recognized approved testing protocol.

(b) Brucellosis.

[1] Cervidae - all animals in the shipment must be tested negative by two official brucellosis tests within thirty days, one of which must be the complement fixation test or follow uniform method and rules in control of brucellosis in cervidae as published by USDA/APHIS.

[2] Other species - use recognized industry testing protocol.

(c) Pseudorabies. Serologic testing methodology must be conducted in accordance with board pseudorabies standards within thirty days prior to entry for the following category, except for suckling piglets accompanying a negative sow:

Suidae: Wild suidae (See also subdivisions c and d of subsection 3.)

(d) Equine infectious anemia. Serologic testing must be conducted in accordance with state equine infectious anemia protocol within twelve months prior to entry for the following category of equidae, except suckling foals accompanying a negative dam:

Equidae: All wild equidae

- (e) Rabies. Any native mammal of the order carnivora that has been taken from the wild may not enter the state if a diagnosis of rabies has been made in the past twelve months in the same species in the state of origin.
- (f) Johne's disease. The following statement signed by an accredited veterinarian in the state or province of origin: "To the best of my knowledge, animals listed herein are not infected with paratuberculosis (Johne's disease) and have not been exposed to animals infected with paratuberculosis. To the best of my knowledge, the premises of origin have not been the site of a significant disease outbreak in the previous twenty-four months that was not contained and extirpated using recommended disease control".
- (g) Diseases of birds.

[1] Pullorum and fowl typhoid.

[a] Captive wild birds as defined in this paragraph, unless going directly to slaughter, must originate from a producer who is participating in the pullorum-fowl typhoid control phase of the national poultry improvement plan (NPIP) plan or the birds must be tested serologically negative for pullorum and fowl typhoid within the past thirty days. In the case of eggs and hatchling birds, the breeder flock must be a national poultry improvement plan participant or must have been tested negative in the past thirty days. Serum testing or national poultry improvement plan active status are required for birds of the order galliformes including prairie chicken (*tympuchus cupido*), quail, pheasants (*phasianus colchicus*), chukar (*alectoris chukar*), gray (Hungarian) partridge (*perdix perdix*), and wild turkey (*meleagris gallopavo*).

[b] In lieu of pullorum and fowl typhoid testing of other birds, the following statement can be placed on the health certificate: "To my knowledge, birds

listed herein are not infected with pullorum or fowl typhoid and have not been exposed to birds infected with pullorum or fowl typhoid during the past twelve months". This statement shall be signed by the owner or the owner's representative.

[2] Avian tuberculosis (mycobacterium avium). The certificate of veterinary inspection must read: "To my knowledge, birds listed herein are not infected with avian tuberculosis and have not been exposed to birds infected with avian tuberculosis during the last twelve months". This requirement applies to all birds, including ratites.

[3] Duck plague (duck virus enteritis, D.V.E.) and avian cholera. The statement; "To my knowledge, birds listed herein are not infected with duck plague or avian cholera and have not been exposed to birds known to be infected with duck plague or avian cholera within the past one hundred eighty days"; must be written on the health certificate of all anseriformes entering the state. The statement shall be signed by the owner or the owner's representative. This statement applies to waterfowl (anseriformes).

[4] Exotic Newcastle disease (viscerotropic, velogenic viruses) psittacosis.

[a] The statement; "To my knowledge, birds listed herein are not infected with exotic Newcastle disease or psittacosis and have not been exposed to birds known to be infected with exotic Newcastle disease or psittacosis within the past thirty days"; must be written on the health certificate of all psittacine birds entering the state. The statement shall be signed by the owner or the owner's representative. This statement applies to all psittacine birds.

[b] While in transit or while being offered for sale by a person holding a nontraditional livestock license and

nontraditional livestock auction license, the following birds which have been associated with introductions of exotic Newcastle disease should be identified with a numbered leg band or other approved method of identification: yellow naped Amazon parrot (*Amazona ochrocephala auropalliata*), Mexican double yellow head parrot (*Amazona ochrocephala oratrix*), Mexican red head parrot (*Amazona viridigenalis*), spectacled Amazon parrot (*Amazona albifrons*), yellow cheeked Amazon parrot (*Amazona autumnalis*), green conure (*Aratinga holochlora*, *A. strenua*, *A. leucophthalmus*), military machaw (*Ara militaris*), lilac crowned Amazon parrot, (*Amazona finschi*).

[5] Mycoplasmosis. All wild turkeys of the species *meleagris gallopavo*, unless going directly to slaughter, must originate from a producer who is participating in the mycoplasmosis control phase of the national poultry improvement plan or the birds must have been tested serologically negative for *mycoplasma gallisepticum* and *M. synoviae* within the past thirty days. In the case of eggs and hatchling birds, the breeder flock must be a national poultry improvement plan participant or must have been tested negative in the past thirty days.

f. Additional disease testing may be required from the board prior to importation or sale if there is reason to believe other diseases, parasites, or other health risks are present.

g. All cervidae must pass a satisfactory risk assessment conducted by the state veterinarian's office. The state veterinarian's office shall mail, fax, or otherwise deliver a risk assessment form to any person seeking an importation permit for cervidae. The risk assessment form must contain such information and questions as prescribed by the state veterinarian. The state veterinarian's office may refuse entry into this state of any cervidae based upon the risk assessment and any other information available. A person seeking an importation permit for cervidae must be notified of the decision by the state veterinarian's office within ten days of submitting the

risk assessment form. The state veterinarian's office may waive the requirement for a risk assessment if the risks to be assessed are minimal and the person applying for the importation permit has met all other statutory or rule requirements.

2. It is a violation of this rule to release or abandon any nontraditional livestock without prior written authorization from the board. Game bird releases must be stipulated in the license application.
3. The board finds that the following species, hybrids, or viable gametes (ova or semen) are detrimental to existing animals and their habitat through parasites, disease, habitat degradation, or competition. Possession of the following species, hybrids, or viable gametes is restricted to a special license (applies to category 5).
  - a. In the family bovidae, subfamily caprinae: chamois (*rupicapra*), tahr (*hemitragus*), goats, ibexes (*capra*);--- except domestic goat (*capra hircus*), barbary sheep or aoudad (*ammotragus*), mouflon species (*ovis musimon*), subfamily hippotraginae: oryx and gemsbok (*oryx*), addax (*addax*), subfamily redinunae: reed bucks (*redunca*), subfamily alcelaphinae: wildebeests (*connochaetes*), hartebeests (*alcelaphus*), sassabees, blesbok, bontebok, topi (*damaliscus*), subfamily water buffalo (*bubalus*).
  - b. In the family cervidae, all of the following species and hybrids: moose (*alces alces*), axis deer (*axis axis*), rusa deer (*cervus timorensis*), sambar deer (*cervus unicolor*), sika deer (*cervus nippon*), roe deer (*capreolus capreolus* and *capreolus pygurus*), red deer (*cervus elaphus*).
  - c. All wild species of the family suidae (Russian boar, European boar) and hybrids.
  - d. In the family tayassuidae: the collared peccary or javelina (*tayassu tajacu*) and hybrids.
4. A special license application will be reviewed by the nontraditional livestock advisory council. The advisory council shall recommend action to be taken by the board.
5. These special license species may not be released, imported, transported, sold, bartered, or traded within the state except as authorized. The special license animals may be transported out of the state in compliance with the nontraditional livestock rules of the receiving state and federal laws.
6. Persons with proof of possession prior to the effective date of these rules may possess special license species.

7. The following nontraditional livestock are "restricted species", on the basis of specific animal health risks that they pose to wildlife and domestic livestock: white-tailed deer (*Odocoileus virginianus*) and reindeer (caribou) (*Rangifer* sp.), red deer and red deer hybrid.
  - a. Importation of white-tailed deer into North Dakota is allowed only for nontraditional livestock farms having a valid license. The only white-tailed deer that may be permitted entry or transported west of the one hundredth meridian are those originating from states west of the one hundredth meridian where meningeal worm has not been reported. This also applies to intrastate movement.
  - b. Importation of reindeer (*Rangifer* sp.) into North Dakota is prohibited except under the following conditions:
    - (1) All animals in shipment must be tested negative to four brucellosis serological tests.
    - (2) All animals in the shipment must originate in a herd located south of the border of Canada and the United States which is certified brucellosis (*B. suis* and *B. abortus*) and tuberculosis free as determined by whole herd testing.
    - (3) Animals must have never been exposed to tuberculosis positive animals.
  - c. The importation or intrastate movement of red deer and red deer and elk hybrids requires a special license. A license will not be issued for premises in zone 1 or 2. Zone 1 is that area bordered by a line that begins at the junction of the Montana border and Missouri River, runs east along the Missouri River to highway 49, south to highway 21, west to highway 22, to the Slope-Bowman County line, and west to Montana. Zone 2 is that area bordered by a line that begins at the Minnesota state line on highway 2, runs west to Towner and north along the Souris River to the Canadian border.
8. Reclassification of any species listed as restricted is contingent upon compelling scientific information indicating that risks posed by these species to native wildlife populations and domestic livestock can be eliminated or managed effectively through application of new diagnostic or management technologies.
9. Any diseased, prohibited, or restricted animal determined by the board to pose a significant threat to the state's wildlife resources, domestic animals, or human health must be held in quarantine at the owner's expense until disposition is

determined. Possession or transfer of such animals is prohibited if contrary to the determination of the board.

**History:** Effective March 1, 1994; amended effective October 1, 1998; June 30, 1999.

**General Authority:** NDCC 36-01-08

**Law Implemented:** NDCC 36-01-08, 36-01-12

**TITLE 61**  
**Pharmacy, Board of**



DECEMBER 1999

**STAFF COMMENT:** Chapter 61-04-10 contains all new material and is not underscored so as to improve readability.

**CHAPTER 61-04-10  
CLIA WAIVED LABORATORY TESTS**

|             |   |
|-------------|---|
| Section     |   |
| 61-04-10-01 | Definitions   |
| 61-04-10-02 | Education Requirements for Pharmacists to<br>Perform CLIA Waived Laboratory Tests |
| 61-04-10-03 | Minimum Quality Standards Required  |
| 61-04-10-04 | Proper CLIA Registration  |
| 61-04-10-05 | Notification of the Board of Pharmacy   |

**61-04-10-01. Definitions.** For purposes of this chapter:

1. "CLIA" means the federal Clinical Laboratory Improvement Act of 1988, as amended.
2. "OSHA" means the federal occupational safety and health administration.
3. "Portfolio review" means a review by the board of a pharmacist's records of proficiency testing logs, control testing logs, and records of patient tests performed to determine that a pharmacist is continuously and consistently providing a service in a quality and competent manner.

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

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-02. Education requirements for pharmacists to perform CLIA waived laboratory tests.** A pharmacist must meet the following requirements in order to perform CLIA waived laboratory tests authorized by North Dakota Century Code section 43-15-25.3 or added to the list as allowed by that section:

1. Successfully complete a board-approved course of study that incorporates principles of general laboratory procedures to include, at a minimum:
  - a. Infection control;
  - b. OSHA requirements;
  - c. Proper technique to collect laboratory specimens;
  - d. Recognized screening and monitoring values; and
  - e. Quality control.
2. Recertify every three years by portfolio review or reeducation.
3. Successfully complete training for each specific instrument used to perform CLIA waived laboratory tests.

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

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-03. Minimum quality standards required.** Pharmacists performing CLIA waived laboratory tests must meet the following standards:

1. Develop and maintain a procedural manual that includes the following areas:
  - a. Quality control;
  - b. Infection control;
  - c. Hazardous waste disposal;
  - d. Recordkeeping; and
  - e. Test result reporting.
2. Maintain participation in a nationally recognized proficiency program approved by the board.

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

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-04. Proper CLIA registration.** The pharmacist-in-charge of a licensed pharmacy performing tests or any pharmacist operating in a facility not licensed by the board is responsible for ensuring that the facility where the tests are performed has a proper CLIA certificate.

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

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-05. Notification of the board of pharmacy.** The pharmacist-in-charge of a licensed pharmacy that has obtained a CLIA certificate or any pharmacist operating in a facility not licensed by the board of pharmacy must notify the board prior to the initial performance of any CLIA waived tests. The notification must specify the types of tests which are to be performed.

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

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3



**TITLE 67**

**Public Instruction, Superintendent of**



**JANUARY 2000**

**STAFF COMMENT:** Article 67-16 contains all new material and is not underscored so as to improve readability.

**ARTICLE 67-16**

**ALTERNATIVE EDUCATION PROGRAM**

Chapter  
67-16-01            Alternative Education Program

**CHAPTER 67-16-01**  
**ALTERNATIVE EDUCATION PROGRAM**

|             |                                  |
|-------------|----------------------------------|
| Section     |                                  |
| 67-16-01-01 | Eligibility                      |
| 67-16-01-02 | Applications                     |
| 67-16-01-03 | Certification                    |
| 67-16-01-04 | Courses                          |
| 67-16-01-05 | Students                         |
| 67-16-01-06 | Monitoring                       |
| 67-16-01-07 | Cooperative Alternative Programs |
| 67-16-01-08 | Payments                         |

**67-16-01-01. Eligibility.** Any public school district in North Dakota may apply to the superintendent of public instruction for establishment of an alternative education program for students from the ages of sixteen to twenty-one who have dropped out of school. The

alternative programming shall be under the administration of a public school district.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07.2

**67-16-01-02. Applications.** Application forms provided by the department of public instruction require the following information:

1. Name and address of the high school district through which the alternative high school program is provided.
2. Names and addresses of any school districts that have entered into cooperative agreements approved by the department of public instruction and will be providing authorization to students in their district to attend this alternative program.
3. A description of the alternative program as follows:
  - a. The setting and location of the program.
  - b. Information on the staffing of the alternative program.
  - c. Instruction strategies to be utilized.
  - d. A schedule indicating the time or times of day the program will be available to students.
  - e. A detailed description of the curriculum to be provided.
  - f. Other descriptions or explanations of the program.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07.2

**67-16-01-03. Certification.** The school district must certify that the alternative program will be in compliance with the provisions of statute by providing the signature of the board chairperson and the school district superintendent.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07.2, 15-40.2-04

**67-16-01-04. Courses.** All courses in the alternative education program must meet the following criteria:

1. Minimum curriculum in North Dakota Century Code section 15-41-24 and course length in North Dakota Century Code section 15-41-06 must be maintained unless, after submitting an acceptable plan for alternatives, as outlined in chapter 67-16-01, a waiver is granted by the superintendent of public instruction.
2. Program courses must lead toward graduation for each of the participants.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07.2

**67-16-01-05. Students.** Students must be from the ages of sixteen to twenty-one and have been dropped from the regular school membership to be reported for foundation aid payments in the alternative program.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07.2

**67-16-01-06. Monitoring.** The department of public instruction will monitor alternative programs by reviewing annual documentation including fall reports and completion rate data:

1. Certificate of compliance.
2. School calendar.
3. MIS03 certified personnel record.
4. Pupil membership report.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-06.4, 15-40.1-07.2

**67-16-01-07. Cooperative alternative 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 alternative program. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07.2, 15-40.2-04

**67-16-01-08. Payments.** Foundation aid payments for high school students will be made based on days of membership in an approved alternative program. Proportionate foundation aid payments will be made for students enrolled in less than four units based on the number of units carried and the high school weighting factor.

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

**General Authority:** NDCC 15-40.1-07.2, 28-32-02

**Law Implemented:** NDCC 15-40.1-07, 15-40.1-07.2

**STAFF COMMENT:** Article 67-17 contains all new material and is not underscored so as to improve readability.

**ARTICLE 67-17**

**ADULT EDUCATION AND LITERACY PROGRAMS**

Chapter  
67-17-01      Adult Education and Literacy Programs

**CHAPTER 67-17-01**  
**ADULT EDUCATION AND LITERACY PROGRAMS**

| Section     | Purpose                      |
|-------------|------------------------------|
| 67-17-01-01 | Purpose                      |
| 67-17-01-02 | Plan                         |
| 67-17-01-03 | Federal Approval and Funding |
| 67-17-01-04 | Local Applicants             |
| 67-17-01-05 | Review of Applications       |
| 67-17-01-06 | Funding                      |
| 67-17-01-07 | Charge for Services          |
| 67-17-01-08 | Reporting                    |

**67-17-01-01. Purpose.** The adult education and literacy education program is established and promoted to improve education opportunities for adults who are lacking literacy skills. The department of public instruction provides funding for the local applicants described in section 67-17-01-04 to establish and maintain local adult education and family literacy programs. The activities include:

1. Assisting adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency;
2. Assisting adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; and
3. Assisting adults in the completion of a secondary school education.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2, 15-21-04.3, 15-21-04.4

**67-17-01-02. Plan.** The program is conducted under a detailed plan prepared and administered by the department of public instruction.

The plan is identified as the North Dakota state plan for adult education and literacy, April 1999, and it is incorporated by reference into these rules. The state plan is developed by the department of public instruction, under the guidance provided by the United States department of education and is approved by the United States department of education. The state plan outlines how the state will administer the Workforce Investment Act of 1998 (P.L. 105-220) Title II. Copies of the state plan are available from the department of public instruction. The local programs will also submit student data and other required reports by the state and the United States department of education.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2

**67-17-01-03. Federal approval and funding.** Unless otherwise specified in these rules, the eligibility to participate in the adult education and literacy program is governed by the Workforce Investment Act of 1998 (P.L. 105-220) Title II (section 231) and other procedures embodied in relevant federal notices and policy memos. The local programs must conform to other federal lawfully issued regulations and policies relating to the federal program. Terms used in this chapter have the same meaning as the same terms when used in federal adult education regulations and policies. The department of public instruction will announce annually its intent to provide funding for adult education and literacy programs. The announcement will be made through newspapers, the internet, direct mailings to existing programs, and other means that may be available.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2, 15-21-04.3

**67-17-01-04. Local applicants.** The local education agencies, public agencies, community-based organizations, agencies responsible for corrections education, postsecondary education institutions, and institutions that serve educationally disadvantaged adults which wish to develop and implement an adult education and literacy program may apply. The applications must be prepared according to the criteria prepared by the department of public instruction. The criteria for application development are contained in the North Dakota state plan for adult education and literacy under section 67-17-01-02.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2

**67-17-01-05. Review of applications.** A review committee of not less than three individuals will be selected by the department of public instruction. The committee may be selected from within the department

of public instruction staff or outside personnel. The review committee will use the application review criteria developed by the department of public instruction. The review criteria are part of the state plan for adult education and literacy under section 67-17-01-02. Upon completion of its review, the committee will forward its recommendations for approval and funding to the superintendent of public instruction who will publicly announce the approved applications and grants through direct communication with the applicants and newspapers.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2

**67-17-01-06. Funding.** Grants may be awarded for single or multiple years. The funding cycle begins July first and ends June thirtieth. The amount of funding to be awarded to the applicants will be based on a review of their application and their ability to meet specific criteria outlined in the Workforce Investment Act of 1998 (P.L. 105-220) Title II (section 231).

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2, 15-21-04.3

**67-17-01-07. Charge for services.** Local agencies may charge adults enrolled in adult education and literacy programs tuition, fees, or any other charges or require the purchase of any books or any other materials that are needed for participation in the program.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2

**67-17-01-08. Reporting.** Each grantee must submit student data and other required federal and state reports to the department of public instruction as required by the Workforce Investment Act of 1998 (P.L. 105-220) Title II (sections 212, 221, and 224) and outlined in the North Dakota state plan for adult education and literacy under section 67-17-01-02.

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

**General Authority:** NDCC 15-21-04.2, 15-21-22, 28-32-02

**Law Implemented:** NDCC 15-21-04.2

STAFF COMMENT: Article 67-19 contains all new material and is not underscored so as to improve readability.

## ARTICLE 67-19

### ACCREDITATION: PROCEDURES AND STANDARDS AND CRITERIA

Chapter  
67-19-01            Accreditation: Procedures and Standards and Criteria

#### CHAPTER 67-19-01

### ACCREDITATION: PROCEDURES AND STANDARDS AND CRITERIA

| Section     |  |
|-------------|--|
| 67-19-01-01 | Definitions  |
| 67-19-01-02 | Accreditation Status   |
| 67-19-01-03 | Loss of Accreditation Status - Penalties   |
| 67-19-01-04 | Nonclassified  |
| 67-19-01-05 | Identification of Accreditation Status   |
| 67-19-01-06 | Classification by School Grade Description<br>and Authority  |
| 67-19-01-07 | Enrollment Categories  |
| 67-19-01-08 | Qualifications and Time Assignments for<br>Administrators, Counselors, and Library<br>Media Specialists                            |
| 67-19-01-09 | Types of Standards and Criteria - Penalties  |
| 67-19-01-10 | Review Cycle   |
| 67-19-01-11 | Appeals Procedure  |
| 67-19-01-12 | Alternative Formats and Procedures   |
| 67-19-01-13 | Calculation Tables for Secondary, Middle Level,<br>and Junior High Schools   |
| 67-19-01-14 | Calculation Tables for Elementary Schools  |
| 67-19-01-15 | School Program Improvement   |
| 67-19-01-16 | Administration - Superintendent Qualifications<br>and Time Assignments   |
| 67-19-01-17 | Qualifications of an Administrative Assistant<br>or Assistant Superintendent   |
| 67-19-01-18 | Administration - Secondary School Principal<br>Qualifications and Time Assignments   |
| 67-19-01-19 | Administration - Middle Level and Junior High<br>School Principal and Assistant Principal<br>- Qualifications and Time Assignments |
| 67-19-01-20 | Administration - Elementary School Principal<br>Qualifications and Time Assignments  |
| 67-19-01-21 | Administration - Shared Elementary School Principal<br>- Elementary School Principal Qualifications<br>and Time Assignments        |

|             |  |
|-------------|--|
| 67-19-01-22 | Administration - Assistant Elementary School Principal - Elementary School Principal Qualifications and Time Assignments |
| 67-19-01-23 | Instructional Personnel - Curriculum or Instructional Area Director  |
| 67-19-01-24 | Instructional Personnel - Secondary School Teacher Qualifications  |
| 67-19-01-25 | Instructional Personnel - Secondary School Teacher Qualifications - Specific Subject Area Preparation                    |
| 67-19-01-26 | Instructional Personnel - Middle Level or Junior High School Teacher Qualifications - General Preparation                |
| 67-19-01-27 | Instructional Personnel - Middle Level or Junior High School Teacher Qualifications - Specific Subject Area Preparation  |
| 67-19-01-28 | Instructional Personnel - Elementary School Teacher Qualifications - General Preparation                                 |
| 67-19-01-29 | Instructional Personnel - Elementary School Teacher Qualifications - Specific Subject Preparation                        |
| 67-19-01-30 | Professional Growth Policy - Staff Development   |
| 67-19-01-31 | Written Curriculum Plan for Kindergarten Through Grade Twelve  |
| 67-19-01-32 | Secondary School Requirements - Enrollments in Grades Seven Through Twelve   |
| 67-19-01-33 | Middle Level or Junior High School - Enrollment in Grade Nine  |
| 67-19-01-34 | Middle Level or Junior High School - Enrollments in Grades Five Through Eight  |
| 67-19-01-35 | Elementary School - Enrollments in Kindergarten Through Grade Eight  |
| 67-19-01-36 | Class Size   |
| 67-19-01-37 | Teacher Preparation Time - Kindergarten Through Grade Twelve   |
| 67-19-01-38 | Standardized Testing   |
| 67-19-01-39 | Pupil Personnel Services   |
| 67-19-01-40 | Counseling and Guidance Services   |
| 67-19-01-41 | Library Media Services   |
| 67-19-01-42 | School Policies - Handbooks - Attendance - Promotion and Retention   |

**67-19-01-01. Definitions.** As used in this chapter:

1. "Accredited warned status" means the status of a school that is cited on:
  - a. A required criterion;
  - b. An accrual of less than eighty-five percent of the total points assigned to the optional standards and criteria; and

- c. The lack of achievement of at least fifty percent of the point value assigned in any one section.
2. "Appropriate director" means the respective director or assistant director of the approval and accreditation unit in the department.
3. "Department" means the department of public instruction.
4. "Not accredited status" means a school does not meet the qualifying standards and criteria by enrollment categories.
5. "Unit of credit" means a minimum of one hundred twenty clock-hours of instruction for all courses except the natural sciences which require one hundred fifty clock-hours of instruction.
6. "Vocational education unit of credit" means a minimum of one hundred fifty clock-hours of instruction.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-02. Accreditation status.**

1. A school seeking the status of accredited with commendation must:
  - a. Contact the appropriate director;
  - b. Conduct a formal school improvement process, which must:
    - (1) Be approved in advance by the appropriate director; and
    - (2) Have the results that demonstrate that the educational program supports the philosophy, goals, and objectives that have been adopted by the school;
  - c. A school shall be accredited with commendation upon department approval of the school improvement plan, which must be submitted within one year of the team visitation; and
  - d. A school must maintain the accredited with commendation status.
2. A school seeking the status of accredited must:
  - a. Contact the appropriate director; and

- b. (1) Meet all the required standards and criteria;
- (2) Accrue eighty-five percent of the total point values assigned to the optional standards and criteria that apply to the school; and
- (3) Achieve at least fifty percent of the point values assigned to each in sections 67-19-01-13 and 67-19-01-14.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-03. Loss of accreditation status - Penalties.**

1. If the citations for the accredited warned status are not removed by the next date of classification, the school will not be accredited. An accredited warned status will be awarded.
2. A school must not be accredited if the citations for the accredited warned status for the previous year have not been removed. A not accredited status must be awarded.
3. A high school that is not accredited on or after July 1, 1991, is not entitled to the amounts resulting from applying the weighting factor as provided by the foundation aid payment formula.
4. A high school that remains not accredited for the second year will have an additional two hundred dollars per student deducted from the amount per student received for the previous year. An additional two hundred dollars deduction per student per year will continue for each additional year the school remains not accredited.
5. An elementary school that is not accredited on or after July 1, 1992, will have the elementary foundation aid reduced by two hundred dollars per student each year that the school is not accredited.

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

**General Authority:** NDCC 15-21-04.1, 15-40.1-08, 15-40.2-06, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-40.1-06, 15-40.1-08, 15-45-02

**67-19-01-04. Nonclassified.** A school not seeking accreditation must be nonclassified.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-05. Identification of accreditation status.** The accreditation status of all schools must be provided in the educational directory and listed on the annual accreditation reports and licenses issued to the schools.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-06. Classification by school grade description and authority.**

1. A school must be classified as a secondary school, middle level or junior high school, or an elementary school dependent upon the grade organization in that school. Accreditation standards and criteria must be applied according to the classification of a school. A school district retains the sole discretion to organize grades in the configurations that are most appropriate for that district.
2. Configurations for school classifications are:
  - a. Secondary school as organized may be grades seven through twelve, eight through twelve, nine through twelve, or ten through twelve. If grade seven or eight is served in any combination with grades nine through twelve, the standards and criteria for grades seven through twelve must be reviewed as one unit.
  - b. Middle level or junior high school as organized may be grades five through eight, six through eight, seven and eight, six through nine, or seven through nine.
    - (1) If grades seven and eight are served in a five or six through eight unit and grade nine is not part of the organization, the elementary standards and criteria and point values will be applied for determination of accreditation status.
    - (2) A school containing only grades seven and eight will be reviewed upon the middle level or junior high school standards.

- (3) If grade nine is served in a six or seven through nine unit, the middle level and junior high school standards and criteria and point values will be applied for determination of accreditation status.
- c. Elementary school as organized may be kindergarten, kindergarten through grade six, or kindergarten through grade eight.
- (1) If kindergarten or grades one through six are served singly or in any combination, the elementary standards and criteria and point values will be applied.
  - (2) If grades seven and eight are served in any combination kindergarten through grade eight, the standards and criteria and numerical point values for grades seven and eight will be considered with the elementary school.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-07. Enrollment categories.**

1. For organizations listed in subsection 2 of section 67-19-01-06, the enrollment categories are as follows:
  - a. Secondary:
    - (1) One hundred or fewer;
    - (2) One hundred one through two hundred fifty; and
    - (3) Two hundred fifty-one or more.
  - b. Middle level and junior high school:
    - (1) One hundred or fewer;
    - (2) One hundred one through two hundred fifty; and
    - (3) Two hundred fifty-one or more.
  - c. Elementary:
    - (1) Twenty-four or fewer;
    - (2) Twenty-five through one hundred;
    - (3) One hundred one through two hundred fifty; and

- (4) Two hundred fifty-one or more.
2. If there are two or more of the same type of schools (i.e., three elementary schools in a district), the student enrollment in the largest school must determine the appropriate category of standards and criteria.
3. A school may request to remain in the next lower enrollment category to meet standards if there have been some changes or anticipated changes in student enrollment or school organization and if the current enrollment does not exceed the limit of the lower enrollment category by twenty percent or more.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-08. Qualifications and time assignments for administrators, counselors, and library media specialists.** The qualifications and time assignments for administrators, counselors, and library media specialists must be based upon the total number of students being served. Specific sections of the accreditation standards that address this are sections 67-19-01-16, 67-19-01-18, 67-19-01-19, 67-19-01-20, 67-19-01-21, 67-19-01-22, 67-19-01-24, 67-19-01-26, 67-19-01-28, 67-19-01-40, and 67-19-01-41.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-09. Types of standards and criteria - Penalties.**

1. Required standards and criteria are those that must be reviewed annually. A school that is cited on a required criterion must be accredited warned. Citations for required standards and criteria must be removed by March thirty-first of the following school year or the school must be not accredited.
2. Optional standards and criteria are those that have been assigned numerical point values and will be reviewed on a two-year cycle. A school must:
  - a. Accrue eighty-five percent of the total points; and
  - b. Achieve at least fifty percent of the point values assigned in each section.
3. A school which does not accrue eighty-five percent of the total points or does not achieve at least fifty percent of the

point values assigned in any one section must be accredited warned. The accreditation report of a school in this category must confirm an accrual of eighty-five percent of the total points and an achievement of at least fifty percent of the point values assigned to each section by March thirty-first of the following school year, or the school must be not accredited.

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

**General Authority:** NDCC 15-21-04.1, 15-40.1-08, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-40.1-08, 15-45-02

**67-19-01-10. Review cycle.**

1. Each school must submit the professional personnel forms (MIS03) to be reviewed annually for the required standards and criteria and biennially, in conjunction with the accreditation report, for the optional standards and criteria.
2. The school must be notified each year on or before March thirty-first on its accreditation status. The school must have ten days to respond in writing to provide information to correct the citation.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-11. Appeals procedure.**

1. A school may appeal the decision on the accreditation status by May first to the superintendent of public instruction. The appeal must be submitted in writing to the appropriate state director of school approval and accreditation. The state director must forward the appeal to the state accreditation committee.
2. The state accreditation committee must forward its recommendation regarding the appeal to the superintendent of public instruction by June fifteenth. The committee must consist of one member appointed by the executive board from each of the following organizations:
  - a. North Dakota school boards association.
  - b. North Dakota association for school administrators.
  - c. North Dakota association for elementary school principals.
  - d. North Dakota association for secondary school principals.

- e. North Dakota education association (two - elementary and secondary).
  - f. North Dakota association for supervision and curriculum development.
  - g. North Dakota Indian education association.
3. The superintendent of public instruction must issue the final decision to the school by June thirtieth.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-12. Alternative formats and procedures.**

1. Innovation is encouraged under controlled circumstances. Schools may seek a design for more effective education for its students and may request permission from the state director to develop alternative formats and procedures that differ from the accreditation standards, criteria, and procedures established for North Dakota schools.
2. A request for variation from a standard must be submitted by April fifteenth to the state director.
3. The request must be considered by the state accreditation committee and may be approved upon meeting the following conditions:
  - a. The submitted written plan must include a description of the alternative format and procedures and the process used in developing the plan;
  - b. A written statement must be included of the mission or philosophy, the goals and the objectives of the school, and how the alternative format supports this statement and enhances student learning;
  - c. The standards for which a variance is being requested and reasons for requesting the variance must be stated;
  - d. An explanation must be included showing the intent of the standards and how they will be met using the alternative format being proposed; and
  - e. An evaluation procedure must be built into the format that is being proposed.

The results of the evaluation must be submitted annually to the appropriate state director.

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

**General Authority:** NDCC 15-21-04.1, 15-21-04.5, 15-45-02

**Law Implemented:** NDCC 15-21-02, 15-21-04.1

**67-19-01-13. Calculation tables for secondary, middle level, and junior high schools.**

1. The calculation tables outline the standards for secondary schools and middle level and junior high schools and identify the required standards and the point values assigned to each item in the sections for the optional standards.
2. The accreditation standards and criteria that are identified as required, indicated by the letter R in subsection 6, are those which must be met by all schools annually.
3. The optional standards and criteria are designed to provide some flexibility to schools. These standards, which have been assigned point values, are reviewed biennially.
4. A school must accrue at least eighty-five percent of the total point values and achieve at least fifty percent of the point value assigned to each section.
5. Schools must accrue point values for the standards that apply directly to them (e.g., a school employing an assistant superintendent is eligible for the two points assigned to that standard).
6. Calculation tables for secondary, middle level, and junior high are:

| a. School improvement:  | Points |
|---|--------|
| (1) Mission or philosophy, goals, and objectives (seven-year cycle) | R      |
| (2) A plan for school evaluation (seven-year cycle)                 | R      |
| (3) School improvement plan (seven-year cycle)                      | R      |
| (4) Progress report (submitted biennially)                          | R      |

b. Administration:

- (1) Superintendent:
    - (a) Qualifications R
    - (b) Time assignment 5
  - (2) Administrative assistant or assistant superintendent qualifications 2
 

(Accrual of 2 points if employed and qualified)
  - (3) Curriculum or instructional area director qualifications 2
 

(Accrual of 2 points if employed and qualified)
  - (4) Principal:
    - (a) Qualifications R
    - (b) Time assignment 5
  - (5) Assistant principal:
    - (a) Qualifications 2
 

(Accrual of 2 points if employed and qualified)
    - (b) Time assignment 2
- c. Instructional personnel:
- (1) Teacher preparation:
    - (a) Minimum teacher preparation R
    - (b) Specific subject area preparation:
 

Maximum accrual for enrollment category:

|         |    |
|---------|----|
| 0-100   | 10 |
| 101-250 | 15 |
| 251+    | 20 |

(Loss of 2 points for each teacher lacking specific preparation)

|  |    |
|--|----|
| (2) Professional growth policy   | 4  |
| (3) Professional development plan                                      | 4  |
| d. Instructional program:  |    |
| (1) Written curriculum plan  | R  |
| (2) Two-year course offerings  | R  |
| (3) Class size:  |    |
| Maximum accrual for enrollment category:                               |    |
| 0-100  | 10 |
| 101-250  | 15 |
| 251+   | 20 |
| (Loss of 1 point allowance per class over the three percent allowance) |    |
| e. Student evaluation:   |    |
| (1) Written program  | R  |
| (2) Standardized testing:  |    |
| (a) Grades 9-12, achievement test                                      | 4  |
| (b) Grade 7 or 8:  |    |
| [1] Achievement test   | 2  |
| [2] Aptitude test  | 2  |
| f. Pupil personnel services:   |    |
| (1) Written program  | R  |
| (2) Coordinator  | R  |
| (3) Counseling and guidance services:                                  |    |
| (a) Counselor qualifications   | 3  |
| (b) Counselor time assignment  | 3  |
| g. Library media services:   |    |

|                                    |   |
|------------------------------------|---|
| (1) Written program                | R |
| (2) Media personnel:               |   |
| (a) Staff qualifications           | 3 |
| (b) Time assignment                | 3 |
| (3) Expenditures                   | 2 |
| h. School policies:                |   |
| (1) Handbooks:                     |   |
| (a) Teacher handbook               | 2 |
| (b) Student and parent handbook    | 2 |
| (2) Attendance policy              | 2 |
| (3) Promotion and retention policy | 2 |

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-14. Calculation tables for elementary schools.**

1. The accreditation standards and criteria which are identified as required, indicated by the letter R, in section 67-19-01-13 are those which must be met by all schools within the timelines established.
2. The optional standards and criteria are designed to provide some flexibility to schools. These standards, which have been assigned point values, are reviewed biennially.
3. A school must accrue at least eighty-five percent of the total point values and achieve at least fifty percent of the point value assigned to each section.
4. Schools must accrue point values for the standards that apply directly to them (e.g., a school employing an assistant superintendent is eligible for the two points assigned to that standard).
5. Calculation tables for elementary schools are:
 

|                        |        |
|------------------------|--------|
| a. School improvement: | Points |
|------------------------|--------|

- |  |   |
|--|---|
| (1) Mission or philosophy, goals, and objectives<br>(seven-year cycle) | R |
| (2) A plan for school evaluation<br>(seven-year cycle)                 | R |
| (3) School improvement plan<br>(seven-year cycle)                      | R |
| (4) Progress report (submitted biennially)                             | R |
| b. Administration:   |   |
| (1) Superintendent (if employed):                                      |   |
| (a) Qualifications   | R |
| (b) Time assignment  | 5 |
| (2) Assistant superintendent qualifications:                           | 2 |
| (Accrual of 2 points if employed and qualified)                        |   |
| (3) Curriculum or instructional area director qualifications:          | 2 |
| (Accrual of 2 points if employed and qualified)                        |   |
| (4) Principal:   |   |
| (a) Qualifications   | R |
| (b) Time assignment  | 5 |
| (5) Assistant principal (if employed):                                 |   |
| (a) Qualifications   | 2 |
| (b) Time assignment  | 2 |
| c. Instruction personnel:  |   |
| (1) Teacher preparation:   |   |
| (a) Minimum teacher preparation  | R |
| (b) Specific subject area preparation:                                 |   |

Maximum accrual for enrollment category:

|         |    |
|---------|----|
| 0-100   | 10 |
| 101-250 | 15 |
| 251+    | 20 |

(Loss of 2 points for each teacher lacking specific preparation)

- (2) Professional growth policy 4
- (3) Professional development plan 4

d. Instructional program:

- (1) Written curriculum plan R
- (2) Curriculum subjects and time allotment R
- (3) Class size:

Maximum accrual for enrollment category:

|         |    |
|---------|----|
| 0-100   | 10 |
| 101-250 | 15 |
| 251+    | 20 |

- (4) Grade levels per teacher 6
- (Loss of 1 point per teacher)

e. Student evaluation:

- (1) Written program R
- (2) Standardized testing:
  - (a) Grades 1-6:
    - [1] Achievement test 2
    - [2] Aptitude test 2
  - (b) Readiness - kindergarten and first grade 2

|                                    |   |
|------------------------------------|---|
| f. Pupil personnel services:       |   |
| (1) Written program                | R |
| (2) Coordinator                    | R |
| (3) Counselor qualifications       | 3 |
| (4) Counselor time assignment      | 3 |
| g. Library media services:         |   |
| (1) Written program                | R |
| (2) Librarian:                     |   |
| (a) Qualifications                 | 3 |
| (b) Time assignment                | 3 |
| (3) Expenditures                   | 2 |
| h. School policies:                |   |
| (1) Handbooks:                     |   |
| (a) Teacher handbook               | 2 |
| (b) Student and parent handbook    | 2 |
| (2) Attendance policy              | 2 |
| (3) Promotion and retention policy | 2 |

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-02, 15-21-04.1

**67-19-01-15. School program improvement.** The school program must meet the needs of all students in public and private schools. The plan for school improvement must be established as a result of a local assessment that leads to the development of appropriate learner and program outcomes at each school. Schools may use collaborative means to determine the extent to which these indicators of effective schooling are present and enhance the quality of education in the school.

1. The school must have a written statement of the mission or philosophy, goals, and objectives which is the governing document for the school and its programs. It must be developed and reviewed periodically by the school administrators, staff, and school board; students; parents; and community members.

2. For the evaluation of the total program, the school must have a written plan that must be reviewed and revised at least once every five years and a copy which is submitted to the department. The written plan must identify:
  - a. The goals for the evaluation; and
  - b. The procedures and methods to be used which include the instruments, people involved, timeline, and how the findings will be analyzed.
3. The school must have a written school improvement plan. The written school improvement plan must evaluate school improvement and must include the improvement goals, activities, timeline, persons responsible, and evaluation. The plan must be reviewed and revised at least once every five years and submitted to the department.
4. The school shall:
  - a. Conduct an annual review of the written school improvement plan;
  - b. Revise the plan as necessary; and
  - c. Submit a progress report on the biennial accreditation report.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-16. Administration - Superintendent qualifications and time assignments.**

1. Qualifications:
  - a. Public high school district, parochial or private high school must employ a superintendent who has an administrative credential, AD01 or AD02.
  - b. Graded elementary district, parochial or private elementary school may employ a superintendent. If so employed, the superintendent must have an administrative credential, AD01 or AD02.
2. Time assignments for superintendents based on school enrollment for all grades.
  - a. Enrollment two hundred fifty or fewer. A superintendent must devote a minimum of one-half of the instructional day

to functions of the superintendency (180 minutes per day or 900 minutes per week).

- b. Enrollment two hundred fifty-one through four hundred. A superintendent must devote a minimum of two-thirds of the instructional day to functions of the superintendency (240 minutes per day or 1200 minutes per week).
  - c. Enrollment four hundred one or more. A superintendent must devote full time to functions of the superintendency (360 minutes per day or 1800 minutes per week), of which a maximum of one-sixth of the instructional day may be devoted to instructional activities.
3. With the approval of the department, two or more school districts or a consortium of schools may share a superintendent if the superintendent is:
    - a. Assigned to full-time administration and supervision; and
    - b. Has an administrative credential, AD01 or AD02.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-02, 15-21-04.1

**67-19-01-17. Qualifications of an administrative assistant or assistant superintendent.** An administrative assistant or assistant superintendent must have an administrative credential, AD01 or AD02, or a master's degree in the assigned area.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-18. Administration - Secondary school principal qualifications and time assignments.**

1. A secondary school principal administering a school with enrollments in grades seven through twelve, eight through twelve, nine through twelve, or ten through twelve must have the following qualifications within the person's enrollment classification:
  - a. Enrollment one hundred or fewer. A secondary school principal must have a secondary principal's credential, SP03.
  - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must have a secondary principal's credential, SP02.

- c. Enrollment two hundred fifty-one or more. A secondary school principal must have a secondary principal's credential, SP01.
2. The time assignment for the secondary school principal within the person's enrollment classification must be as follows:
  - a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
  - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of one-half of the instructional day to the principalship (180 minutes per day or 900 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
  - c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of full time to the principalship (360 minutes per day or 1800 minutes per week). At least one-half of that time must include activities related to providing building level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.
3. Time assignments for shared secondary school principal.
  - a. The time assignments for a secondary principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:
    - (1) Enrollment ninety-nine or fewer. A secondary school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
    - (2) Enrollment one hundred through two hundred fifty. A secondary school principal must devote a minimum of two-thirds time of the instructional day to the principalship (240 minutes per day or 1200 minutes per week).
    - (3) Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of

full time to the principalship (360 minutes per day or 1800 minutes per week).

4. Secondary school assistant principal administering a school with enrollments in grades seven through twelve, eight through twelve, nine through twelve, or ten through twelve.
  - a. Qualifications by enrollment category:
    - (1) Enrollment two hundred fifty-one through five hundred. A secondary school assistant principal must have a secondary principal's credential, SP02.
    - (2) Enrollment five hundred one or more. A secondary school assistant principal must have a secondary principal's credential, SP01.
  - b. Time assignments by enrollment category:
    - (1) Enrollment five hundred one through seven hundred fifty. A secondary school assistant principal must devote a minimum of one-half of the instructional day to the assistant principalship (180 minutes per day or 900 minutes per week).
    - (2) Enrollment seven hundred fifty-one or more. A secondary school assistant principal must devote full time to the assistant principalship (360 minutes per day or 1800 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-19. Administration - Middle level and junior high school principal and assistant principal - Qualifications and time assignments.**

1. Qualifications by enrollment categories are as follows:
  - a. Enrollment one hundred or fewer. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP03 or SP03.
  - b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP02 or SP02.

- c. Enrollment two hundred fifty-one or more. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01 or SP01.
2. Time assignments by enrollment categories are as follows:
  - a. Enrollment one hundred or fewer. A middle level or junior high school principal must devote a minimum of one-third of the instructional day to the principalship (120 minutes per day or 600 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
  - b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must devote a minimum of one-half of the instructional day to the principalship (180 minutes per day or 900 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership.
  - c. Enrollment two hundred fifty-one or more. A middle level or junior high school principal must devote full time to the principalship (360 minutes per day or 1800 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.
3. A middle level or junior high school assistant principal must have an elementary or a secondary principal's credential, EP01 or SP01.
4. Time assignments by enrollment categories are as follows:
  - a. Enrollment five hundred through seven hundred fifty. A middle level or junior high school assistant principal must devote a minimum of one-half of the instructional day to the assistant principalship (180 minutes per day or 900 minutes per week).
  - b. Enrollment seven hundred fifty-one or more. A middle level or junior high school assistant principal must devote full time to the assistant principalship (360 minutes per day or 1800 minutes per week), of which at least one-half of that time must include activities related to providing building level instructional

leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-20. Administration - Elementary school principal qualifications and time assignments.**

1. Qualifications by enrollment categories are as follows:
  - a. Enrollment twenty-four or fewer. An elementary school principal must have a North Dakota educator's professional license with a major, minor, or an endorsement in elementary education.
  - b. Enrollment twenty-five through one hundred. An elementary school principal must have an elementary principal's credential, EP03.
  - c. Enrollment one hundred one through two hundred fifty. An elementary school principal must have an elementary principal's credential, EP02.
  - d. Enrollment two hundred fifty-one or more. An elementary school principal must have an elementary principal's credential, EP01.
2. Time assignments are calculated by multiplying the number of full-time equivalent licensed personnel by the minimum time allotment, which is fifteen minutes. If the principal is also teaching, that time would not be included in the calculation. Time assignments by enrollment categories are as follows:
  - a. Enrollment twenty-four or fewer. Time should be provided for the performance of administrative duties.
  - b. Enrollment twenty-five or more:
    - (1) For one school. Twelve minutes per day per full-time equivalent licensed person.
    - (2) For two schools or another assignment. Fifteen minutes per day per full-time equivalent licensed person.

3. The elementary school principal must devote one-half of the time assigned as principal to activities related to providing building level instructional leadership.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-21. Administration - Shared elementary school principal - Elementary school principal qualifications and time assignments.** The time assignments for the elementary school principal serving two schools or employed in a school that has a shared superintendent must be fifteen minutes per day per full-time equivalent licensed person.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-22. Administration - Assistant elementary school principal - Elementary school principal qualifications and time assignments.**

1. An assistant elementary school principal must have an elementary principal's credential applicable to the next lower enrollment category by the date of issuance of the classification letter for the following school year.
2. Time assignments are as follows:
  - a. If a principal serves in more than one building or has another assignment other than teaching, there must be an assistant principal assigned in that building. Time devoted to the functions of the assistant principal is not regulated but must be commensurate with the assigned duties and documented to correspond to assigned duties.
  - b. For a school with an enrollment of six hundred or more, an elementary school assistant principal must devote one-half of the instructional day to the principalship (180 minutes per day), of which at least one-half of that time must include activities related to providing building level instructional leadership.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-23. Instructional personnel - Curriculum or instructional area director.**

1. A curriculum director with districtwide responsibilities must have a minimum of a master's degree in curriculum and must be licensed as a teacher.
2. An instructional area director with responsibilities primarily in the area of instruction must have a master's degree in the area to which the instructor is assigned and must be licensed as a teacher.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-24. Instructional personnel - Secondary school teacher qualifications.**

1. A teacher assigned to teach in a secondary school or actively involved in the educational process of secondary students, such as a guidance counselor or library media specialist, must hold a North Dakota educator's professional license.
2. A teacher must teach in the teacher's major or minor field of preparation unless granted a license to teach in the disciplines of trade, industrial, technical, and health occupations under the laws of North Dakota.
3. Preparation in a course area may be accepted as equivalent to a minor for compliance with state law through submitting a written request and a transcript of pertinent coursework to the education standards and practices board for determination of whether the coursework is acceptable as preparation equivalent to a minor. The education standards and practices board shall place an endorsement on the teacher's license to document that the coursework has been accepted as preparation equivalent to a minor.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-20.1-03, 15-36-11, 15-41-25

**67-19-01-25. Instructional personnel - Secondary school teacher qualifications - Specific subject area preparation.** A college-granted major, minor, or preparation accepted as equivalent to a minor must include specific preparation as listed in the following subject areas:

1. **Business education:**
  - a. Accounting. Academic preparation must include at least six semester or eight quarter hours of accounting.

- b. Computer technology. Academic preparation must include at least six semester or eight quarter hours of office machines.
  - c. Shorthand. Academic preparation must include at least six semester or eight quarter hours of shorthand.
  - d. Typewriting or keyboarding. Academic preparation must include at least three semester or four quarter hours of typewriting or keyboarding.
2. **Career education.** Career education must be integrated in all course areas. If identified separately or if offered for high school credit, teacher academic preparation should include at least six semester or eight quarter hours of career-related coursework.
3. **Computer education.** All teachers teaching computer programming or computer language for high school credit must have a major, minor, or preparation accepted as equivalent to a minor in computer education. All teachers are recommended to integrate computer technology into all courses as appropriate within the goals and objectives, for example, but not to limit the application: English and language arts - word processing; accounting - spreadsheets.
4. **Driver's education.** A teacher must have a driver's education instructor's credential.
5. **English and language arts:**
- a. Composition. Academic preparation must include at least three semester or four quarter hours of composition.
  - b. Developmental reading. Academic preparation must include at least six semester or eight quarter hours of reading instruction.
  - c. Grammar. Academic preparation must include at least three semester or four quarter hours of grammar.
  - d. Journalism. Academic preparation must include at least six semester or eight quarter hours of journalism.
  - e. Literature. Academic preparation must include at least six semester or eight quarter hours of literature.
  - f. Remedial reading. A teacher must have a reading credential.
  - g. Speech and debate. Academic preparation must include at least six semester or eight quarter hours of speech or debate.

- h. Theater arts. Academic preparation must include at least six semester or eight quarter hours of the theater arts.
- 6. **Foreign languages.** A teacher must have a major, minor, or preparation accepted as equivalent to a minor in each foreign language to which a teacher is assigned.
- 7. **Health.** A teacher meeting the teacher preparation requirements in physical education; family and consumer sciences; or biology, anatomy, or physiology and who has eight semester or twelve quarter hours of health must be qualified to teach health.
- 8. **Industrial arts and technology education:**
  - a. Energy and power. Academic preparation must include at least six semester or eight quarter hours of a combination of energy, power, engines, or electricity.
  - b. Graphic arts. Academic preparation must include at least six semester or eight quarter hours of a combination of graphic arts, mechanical drawing, or photography.
  - c. Manufacturing and construction. Academic preparation must include at least six semester or eight quarter hours of a combination of manufacturing, metals, construction, plastics, or woodworking.
  - d. Engineering technology. Academic preparation must be a major in industrial technology or technology education or at least six semester or eight quarter hours in energy or power and six semester or eight quarter hours in production.
- 9. **Mathematics.** Advanced mathematics requires academic preparation that must include at least six semester or eight quarter hours of calculus.
- 10. **Music:**
  - a. Instrumental music. Academic preparation must include eight semester or twelve quarter hours of instrumental music.
  - b. Vocal music. Academic preparation must include eight semester or twelve quarter hours of vocal music.
- 11. **Science:**
  - a. Advanced biology. Academic preparation must include a college-granted major in biology or sixteen semester or twenty-four quarter hours of preparation in biology.

- b. Astronomy. Academic preparation must include six semester or eight quarter hours of astronomy.
- c. Biology or anatomy or physiology. Academic preparation must include eight semester or twelve quarter hours of biology.
- d. Chemistry. Academic preparation must include eight semester or twelve quarter hours of chemistry.
- e. Biochemistry. Academic preparation must include eight semester hours of biology and eight semester hours of chemistry.
- f. Earth science or geology or ecology. Academic preparation must include at least six semester or eight quarter hours of earth science.
- g. Meteorology. Academic preparation must include at least six semester or eight quarter hours of meteorology.
- h. Oceanography. Academic preparation must include at least six semester or eight quarter hours of oceanography.
- i. Physical science. Academic preparation must include four semester or six quarter hours in chemistry and four semester or six quarter hours in physics.
- j. Physics. Academic preparation must include eight semester or twelve quarter hours in physics.
- k. Principles of technology. A teacher must complete a principles of technology workshop approved by the state board of vocational education.

**12. Social studies:**

- a. Economics. Academic preparation must include at least six semester or eight quarter hours of economics.
- b. Geography. Academic preparation must include at least six semester or eight quarter hours of geography.
- c. Government, political science, international relations, or law. Academic preparation must include at least six semester or eight quarter hours of government, political science, international relations, or law.
- d. Psychology. Academic preparation must include at least six semester or eight quarter hours of psychology.
- e. Sociology. Academic preparation must include at least six semester or eight quarter hours of sociology.

- f. United States history. Academic preparation must include at least six semester or eight quarter hours of United States history.
- g. World history. Academic preparation must include at least six semester or eight quarter hours of world history.
- 13. **Special education.** A teacher must have a special education credential in the area of service provided by the teacher.
- 14. **Vocational education.** A teacher in an approved vocational education program must have a vocational education credential.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-26. Instructional personnel - Middle level or junior high school teacher qualifications - General preparation.** General preparation requires the following:

- 1. A teacher assigned to teach in a middle level or junior high school or actively involved in the educational process of middle level or junior high school students, including guidance counselors or library media specialists, must hold a North Dakota educator's professional license.
- 2. A teacher teaching in the middle level or junior high school must have the preparation appropriate for the following grade levels:
  - a. Teacher assigned to a departmentalized program for grades seven and eight must teach in the teacher's major or minor field of preparation or have the preparation as accepted as equivalent to a minor; have a major, minor, or an endorsement in elementary education; or have a major or an endorsement in middle school education;
  - b. Preparation in a course area may be accepted as equivalent to a minor for compliance with North Dakota Century Code section 15-41-25. To determine departmental acceptance, a teacher or administrator must submit a written request and a transcript of pertinent coursework to the education standards and practices board for determination of whether the coursework is acceptable as preparation equivalent to a minor. The education standards and practices board shall place an endorsement on the teacher's license to document that the coursework has been accepted as preparation equivalent to a minor.
  - c. A teacher assigned to a self-contained classroom in grades five through eight must have a major, minor, or an

endorsement in elementary education or have a major or an endorsement in middle school education.

- d. A teacher assigned to a departmentalized program for grade five or six must have a major, minor, or an endorsement in elementary education or have a major or an endorsement in middle school education.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-36-11, 15-45-02, 15-47-46

**67-19-01-27. Instructional personnel - Middle level or junior high school teacher qualifications - Specific subject area preparation.** The following subject areas require specific preparation in addition to the appropriate general teacher preparation listed in section 67-19-01-26, for teachers assigned to a departmentalized program in grades five through nine:

1. **Business education.** Typewriting or keyboarding requires academic preparation that must include at least three semester or four quarter hours of typewriting or keyboarding.
2. **Career education.** Career education must be integrated in all course areas. If identified separately or if offered for high school credit, teacher academic preparation must include at least six semester or eight quarter hours of career-related coursework.
3. **Computer education.** All teachers teaching computer programming or computer language must have a major, minor, or preparation accepted as equivalent to a minor. All teachers are recommended to integrate computer technology into all courses as appropriate within the goals and objectives, for example: English and language arts - word processing; social studies - simulations.
4. **English language arts:**
  - a. English language arts. Academic preparation must include coursework in reading and in speech.
  - b. Reading. Academic preparation must include at least six semester or eight quarter hours of reading instruction.
  - c. Remedial reading. A teacher must have a reading credential.
5. **Foreign languages.** A teacher must have a major, minor, or preparation accepted as equivalent to a minor in each foreign language to which a teacher is assigned.

6. **Health.** A teacher meeting the teacher preparation requirements in physical education, family and consumer sciences, or science and who has eight semester or twelve quarter hours of health is qualified to teach health.
7. **Physical education.** Academic preparation must include at least eight semester or twelve quarter hours of physical education, including preparation in administration of physical education or teaching in physical education and first aid. Academic credit for varsity sports is not applicable.
8. **Industrial arts and technology education:**
  - a. Energy and power. Academic preparation must include at least six semester or eight quarter hours of a combination of energy, power, engines, or electricity.
  - b. Graphic arts. Academic preparation must include at least six semester or eight quarter hours of a combination of graphic arts, mechanical drawing, or photography.
  - c. Manufacturing and construction. Academic preparation must include at least six semester or eight quarter hours of a combination of manufacturing, metals, construction, plastics, or woodworking.
  - d. Engineering technology. Academic preparation must be a major in industrial technology or technology education or at least six semester or eight quarter hours in energy and power and six semester or eight quarter hours in production.
9. **Mathematics.** Academic preparation must include at least six semester or eight quarter hours of mathematics including a course titled college algebra.
10. **Music:**
  - a. Instrumental music. Academic preparation must include eight semester or twelve quarter hours of instrumental music.
  - b. Vocal music. Academic preparation must include eight semester or twelve quarter hours of vocal music.
11. **Science:**
  - a. Science, grades five and six. Academic preparation must include six semester or eight quarter hours of science.
  - b. Life science, grade seven. Academic preparation must include at least six semester or eight quarter hours of biology.

- c. Earth science, grade eight. Academic preparation must include at least three semester or four quarter hours of earth science.
  - d. Physical science. Academic preparation must include four semester or six quarter hours of chemistry and four semester or six quarter hours of physics.
12. **Social studies:**
- a. Social studies, grades five and six. Academic preparation must include six semester or eight quarter hours of social studies.
  - b. Geography, grade seven or eight. Academic preparation must include at least six semester or eight quarter hours of geography.
  - c. North Dakota studies, grade seven or eight. Academic preparation must include completion of a course or workshop in North Dakota studies.
  - d. United States history, grade seven or eight. Academic preparation must include at least six semester or eight quarter hours of United States history.
13. **Special education.** A teacher must have a special education credential in the area of service provided by the teacher.
14. **Vocational education.** A teacher in an approved vocational education program must have a vocational education credential.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-28. Instructional personnel - Elementary school teacher qualifications - General preparation.** General preparation requires the following:

- 1. A teacher assigned to teach in an elementary school or actively involved in the educational process of elementary school students, such as a guidance counselor or library media specialist, must hold a North Dakota educator's professional license.
- 2. A teacher teaching in an elementary school must have the preparation appropriate for the following grade levels:
  - a. Kindergarten. A teacher assigned to kindergarten must have a major, minor, or an endorsement in kindergarten education.

b. Kindergarten through grade eight:

- (1) A teacher assigned to a self-contained classroom in grades one through four must have a major, minor, or an endorsement in elementary education.
- (2) A teacher assigned to a self-contained classroom in grades five through eight must have a major, minor, or an endorsement in elementary education or have a major or an endorsement in middle school education.
- (3) A teacher assigned to a departmentalized program for grade seven or eight must teach in the teacher's major or minor field of preparation; have the preparation as accepted as equivalent to a minor; have a major, minor, or an endorsement in elementary education; or have a major or an endorsement in middle school education.
- (4) Preparation in a course area may be accepted as equivalent to a minor for compliance with North Dakota Century Code section 15-41-25. To determine departmental acceptance, a teacher or administrator must submit a written request and a transcript of pertinent coursework to the education standards and practices board for determination of whether the coursework is acceptable as preparation equivalent to a minor. The education standards and practices board shall place an endorsement on the teacher's license to document that the coursework has been accepted as preparation equivalent to a minor.
- (5) A teacher assigned to a departmentalized program for grade five or six must have a major, minor, or an endorsement in elementary education or have a major or an endorsement in middle school education.
- (6) A teacher assigned to teach in kindergarten through grade four in music, art, physical education, computer education, and foreign language must have:
  - (a) A major, minor, or an endorsement in elementary education; or
  - (b) A major, minor, or preparation as accepted as equivalent to a minor in the assigned area of teaching.
- (7) A teacher assigned to teach in grade five or six in music, art, physical education, computer education, and foreign language must have a:

- (a) Major, minor, or an endorsement in elementary education;
- (b) Major or an endorsement in middle school education; or
- (c) Major, minor, or preparation as accepted as equivalent to a minor in the assigned area of teaching.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-29. Instructional personnel - Elementary school teacher qualifications - Specific subject preparation.**

1. Classroom teachers providing keyboarding instruction. If keyboarding is taught as a separate subject, academic preparation must include completion of a course or workshop in keyboarding. All teachers are recommended to integrate computer technology into all courses as appropriate within the goals and objectives, for example, but not to limit the application: language arts - word processing; social studies - simulations.
2. Teachers in a departmentalized program. A teacher assigned to a departmentalized program for any grades five through eight must have the specific preparation to teach the courses as indicated in section 67-19-01-27.
3. Special education personnel. A special education teacher must have a special education credential in the area of service provided by the teacher.
4. Reading specialists. A remedial or basic skills teacher must have a reading credential or must have completed twenty semester or thirty quarter hours of required coursework within two years of the assumption of duties.
5. Special teachers of mathematics. A special teacher of mathematics must have a major, minor, or an endorsement in elementary education with academic preparation that must include at least six semester or eight quarter hours of mathematics appropriate to the elementary level.
6. Special teachers of music, computer education, and foreign language. A teacher assigned to teach in kindergarten through grade eight in music, computer education, and foreign language must have the specific preparation to teach the courses as indicated in section 67-19-01-24.

7. Teachers of North Dakota studies. Academic preparation must include completion of a course or workshop in North Dakota studies.
8. Teachers of health. Academic preparation must include completion of a course or workshop in health.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-30. Professional growth policy - Staff development.**

1. Each school board must establish and implement a policy of professional growth for the teachers in the school board's district.
2. The following are provided as minimum standards in the establishment of such a policy:
  - a. College credit. All teachers must earn a minimum of four semester or six quarter hours of college credit each five years.
  - b. In service. All teachers must participate in sixty-four clock-hours of in service related to the teaching assignment during each five-year period. At the option of the school district, college credit earned above the minimum four semester or six quarter hours may be substituted for in service. One semester hour of college credit must equal sixteen clock-hours of in service.
  - c. Procedures must be developed to ensure the monitoring and enforcement of the professional growth policy. The policy must delineate the penalties for failure to comply.
  - d. The school administrator must file a current copy of the professional growth policy with the department.
3. A written school district plan must be adopted which describes a program for staff development. The plan must include a description of the procedures, the activities, and the timeline for completion of activities. A copy of the plan must be completed and kept on file for onsite review.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-31. Written curriculum plan for kindergarten through grade twelve.**

1. A school must have a written plan for curriculum assessment, development, implementation, and evaluation. The plan must include a description of the procedures, the activities, and the timeline for implementation. A copy of the plan must be completed and kept on file for onsite review.
2. The curriculum adopted by the district must:
  - a. Be based upon the district's mission statement, philosophy, goals, and objectives;
  - b. Have a written statement of philosophy, goals, and objectives for each subject;
  - c. Provide for articulation of a curriculum for kindergarten through grade twelve;
  - d. Assure that the instructional resources and activities are matched to the philosophy, goals, and objectives for each subject; and
  - e. Provide for periodic evaluation and revision of each subject.
3. If a school elects to use an outcomes-based approach, the school may state the outcomes in addition to the district mission or philosophy, goals, and objectives. Outcomes would include the following:
  - a. Exit outcomes, which means those outcomes that describe what every student should know and be able to demonstrate;
  - b. Program or subject level outcomes, which means those outcomes that describe what students should know and be able to demonstrate in a specific subject such as math or in an area such as fine arts;
  - c. Course outcomes, which means those outcomes that describe what students should know and be able to demonstrate upon completion of a specific course such as seventh grade geography or grade five;
  - d. Unit outcomes, which means those outcomes, covering a quarter or a semester, within a course or grade that describe the general themes that are important within the course; and
  - e. Lesson outcomes, which means those outcomes that are very specific to a course or grade and describe short-term outcomes that cover only a few days of instruction.

4. Each school must have available for information and reference a current edition of a manual of K-12 course codes & descriptions, obtained from the department. The manual identifies the titles and code numbers for courses that have been approved by the department and includes a philosophy for each subject area and a description of each course.
5. Special projects, experimental programs, and exploratory programs are recommended whenever possible in addition to meeting minimal requirements.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-32. Secondary school requirements - Enrollments in grades seven through twelve.**

1. Grades nine through twelve. A curriculum for all secondary school students must assure each student access to a minimum of five units of credit per year.
2. Grades nine through twelve. The minimum units of credit listed for each course area must be taught in each school at least once every two years:
 

|                          |                 |
|--------------------------|-----------------|
| a. English language arts | four units      |
| b. Mathematics           | four units      |
| c. Science               | four units      |
| d. Social studies        | three units     |
| e. Music                 | one unit        |
| f. Physical education    | one unit        |
| g. Health                | one-fourth unit |
3. Grades nine through twelve. A secondary school must provide additional units of elective credit. The number of units is determined by the enrollment categories as follows:
  - a. Enrollment categories, grades nine through twelve:
    - (1) Eighty or fewer - seven units from two course areas;
    - (2) Eighty-one through one hundred fifty - nine units from two course areas;

- (3) One hundred fifty-one through three hundred fifty - eleven units from three course areas; and
  - (4) Three hundred fifty-one or more - thirteen units from four course areas.
- b. The elective courses must be selected from the following:
- (1) Art;
  - (2) Business education;
  - (3) Computer education;
  - (4) Driver and traffic safety education;
  - (5) Economics and the free enterprise system;
  - (6) Modern languages;
  - (7) Family and consumer sciences;
  - (8) Industrial arts or technology education;
  - (9) Vocational occupational programs (as referenced on the MIS03):
    - (a) Agribusiness;
    - (b) Health education;
    - (c) Vocational marketing and education;
    - (d) Family and consumer sciences;
    - (e) Business and office technology; and
    - (f) Trade and industrial education; and
  - (10) Other courses as approved by the department.
- c. Schools must count for purposes of the minimum two-year course offering those courses in which students are enrolled which are provided through cooperative arrangements between or among schools or approved by the department or the state board for vocational education.
4. Grades seven and eight required courses:
- a. A student must be enrolled for a minimum time of instruction per week in the following areas:
    - (1) English language arts            two hundred minutes

- (2) Mathematics two hundred minutes
- (3) Science two hundred minutes
- (4) Social studies two hundred minutes
- (5) Physical education eighty minutes

- b. Students in grades seven and eight require additional reading, writing, speaking, and listening activities in order to continue to develop effective communication skills. When appropriate, additional English language arts time must be provided above the suggested minimum. Reading, writing, speaking, and listening activities must be incorporated into all subject areas.
- c. A student must be enrolled in health education for a minimum of 3600 minutes or sixty clock-hours in grade seven or eight, or both.

5. Grades seven and eight elective courses:

- a. Music must be made available to all students, with a minimum of 3600 minutes or sixty clock-hours of music taught in grade seven or eight, or both.
- b. A minimum of two semester or one hundred twenty clock-hours of instruction in courses from one or a combination of the following courses must be available as elective courses:
  - (1) Art;
  - (2) Agribusiness;
  - (3) Business education;
  - (4) Computer education;
  - (5) Modern languages;
  - (6) Family and consumer sciences;
  - (7) Industrial arts or technology education; and
  - (8) Other courses as approved by the department or the state board for vocational and technical education, or both.

- c. A student in grade seven or eight must not be assigned to a study hall for more than one period a day.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-33. Middle level or junior high school - Enrollment in grade nine.** If grade nine is included in the middle level or junior high school organizational unit, the curriculum for secondary school grades nine through twelve, under section 67-19-01-32, must be provided for grade nine students.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-34. Middle level or junior high school - Enrollments in grades five through eight.**

1. Grades five through eight required courses. A student must be enrolled for a minimum time of instruction per week in the following areas:
  - a. English language arts two hundred minutes
  - b. Mathematics two hundred minutes
  - c. Science two hundred minutes
  - d. Social studies two hundred minutes
  - f. Physical education eighty minutes
2. Students in grades five through eight require additional reading, writing, speaking, and listening activities in order to develop effective communication skills. Additional English language arts time must be included above the minimum. Reading, writing, speaking, and listening activities must be incorporated into all subject areas.
3. A student must be enrolled in health education for a minimum of 3600 minutes or sixty clock-hours in grade seven or eight, or both.
4. Grades five through eight elective courses:
  - a. Music must be available to all students, with a minimum of 3600 minutes or sixty clock-hours of music taught in grade seven or eight, or both.

- b. A minimum of three semester or one hundred eighty clock-hours of instruction in courses from one or a combination of the following courses must be available as elective courses:
- (1) Art;
  - (2) Agribusiness;
  - (3) Business education;
  - (4) Computer education;
  - (5) Modern languages;
  - (6) Family and consumer sciences;
  - (7) Industrial arts or technology education; and
  - (8) Other elective courses as approved by the department or the state board for vocational and technical education, or both.
- c. A middle level or junior high school student must not be assigned to a study hall for more than one period a day.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-35. Elementary school - Enrollments in kindergarten through grade eight.**

1. If grade seven or eight is included in the elementary school organizational unit, the curriculum for middle level or junior high school as defined in section 67-19-01-34, grades seven and eight, must be provided for grade seven and eight students.
2. Kindergarten through grade six. Specific requirements regarding the length of the instructional time per week for all subject areas are:
  - a. Kindergarten (two and one-half hours per day or 750 minutes per week, equivalent);
  - b. Primary (grades one through three)
 

|               | 1 <sup>st</sup> | 2 <sup>nd</sup> | 3 <sup>rd</sup> |
|---------------|-----------------|-----------------|-----------------|
| Language arts | 650             | 650             | 650             |
| Mathematics   | 200             | 200             | 200             |

|                                   |     |     |     |
|-----------------------------------|-----|-----|-----|
| Social studies                    | 100 | 100 | 100 |
| Science                           | 60  | 60  | 60  |
| Health                            | 40  | 40  | 40  |
| Music                             | 90  | 90  | 90  |
| Physical education                | 90  | 90  | 90  |
| Art                               | 45  | 45  | 45  |
| Unallocated time may be used for: | 375 | 375 | 375 |

- (1) Pupil-teacher planning and guided learning;
- (2) The initiation or expansion of a subject area;
- (3) The provision of elective offerings; and
- (4) The provision of pupil personnel services.

|   |                 |                 |                 |
|---|-----------------|-----------------|-----------------|
| c. Intermediate (grades four through six) | 4 <sup>th</sup> | 5 <sup>th</sup> | 6 <sup>th</sup> |
| Language arts                             | 460             | 420             | 420             |
| Mathematics                               | 200             | 200             | 200             |
| Social studies                            | 200             | 200             | 200             |
| Science                                   | 160             | 200             | 200             |
| Health                                    | 80              | 80              | 80              |
| Music                                     | 90              | 90              | 90              |
| Physical education                        | 90              | 90              | 90              |
| Art                                       | 45              | 45              | 45              |
| Unallocated time may be used for:         | 325             | 325             | 325             |

- (1) Pupil-teacher planning and guided learning;
- (2) The initiation or expansion of a subject area;
- (3) The provision of elective offerings; and
- (4) The provision of pupil personnel services.

d. The above time allotments are based upon a five and one-half hour day.

- e. Thirty minutes of supervised free play may be counted as part of the ninety minutes of physical education for kindergarten through grade three.
- f. Music and physical education may be eighty minutes per week in elementary schools that have programs affiliated with secondary programs.
- g. A kindergarten half-day program must be two and one-half hours per day or 750 minutes per week, equivalent, with a curriculum planned and implemented with attention to the children's different needs, interests, experiences, and developmental levels.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-36. Class size.**

- 1. Secondary and middle level and junior high school:
  - a. Class size is recommended to be twenty-five students but may not exceed thirty students.
  - b. A school unit is allowed three percent of the total number of classes taught to exceed thirty students to a maximum of thirty-four students per class without citation.
  - c. Science and vocational education classes must not exceed the capacity of the learning stations provided.
  - d. Instrumental and vocal music classes are exempt from the class size standard.
- 2. Elementary school:
  - a. Maximum classroom enrollment, one grade level per teacher:
    - (1) Kindergarten through grade three, twenty-five students, with class size recommended to be twenty students; and
    - (2) Grades four through eight, thirty students, with class size recommended to be twenty-five students.
  - b. Maximum classroom enrollment, two grade levels per teacher:
    - (1) Kindergarten through grade three, twenty students; and

- (2) Grades four through eight, twenty-five students.
- c. Maximum classroom enrollment, three grade levels per teacher, kindergarten through grade eight, is fifteen students.
  - d. Maximum classroom enrollment, four grade levels per teacher, kindergarten through grade eight, is ten students.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-37. Teacher preparation time - Kindergarten through grade twelve.** A teacher's schedule must include preparation time during the teacher's working day.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-38. Standardized testing.**

1. **Grades nine through twelve.** A nationally norm-referenced standardized achievement test must be administered at any two grade levels or as established by the state plan for testing.
2. **Grades seven and eight.** A nationally norm-referenced standardized group achievement test and a nationally norm-referenced standardized group aptitude test must be administered in grade seven or eight, or both. Both the achievement test and aptitude test must be administered at the same grade level to all students.
3. **Grades one through six.** A nationally norm-referenced standardized achievement test and nationally standardized group aptitude test must be administered to two grade levels each year in any of the elementary grades one through six. The achievement and aptitude tests must be administered at the same grade level to all students.
4. **Kindergarten or grade one.** A standardized readiness test must be administered in either kindergarten or grade one, whichever is the initial point of formal education.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-39. Pupil personnel services.**

1. A pupil personnel services program must be available to meet the needs of students in terms of counseling and guidance services, social and psychological services, and health services.
2. A school must have a written description of the pupil personnel services program, including a written statement of:
  - a. Mission or philosophy;
  - b. Goals and objectives;
  - c. The scope of services, personnel, resources; and
  - d. The schedule for providing for counseling and guidance services, social and psychological services, and health services.
3. The written program must be developed and reviewed periodically in cooperation with representatives from the three service areas.
4. A current copy of the written program must be submitted to the department.
5. The counseling and guidance, social and psychological, and health services must be coordinated by a credentialed school counselor or by credentialed administrative personnel.
6. The classroom teacher may coordinate the services in elementary schools with fewer than twenty-five students.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-40. Counseling and guidance services.**

1. Secondary school counseling and guidance services must be provided by counselors employed in a school with enrollments in kindergarten through grade twelve and grades seven through twelve, eight through twelve, nine through twelve, and ten through twelve.
  - a. The qualifications for school counselors are determined by the total number of students in the schools served:
    - (1) Enrollment one hundred or fewer. A counselor must be a licensed teacher and must have a CD08 counselor designate credential with eight semester or twelve

- quarter hours of core graduate credit in guidance and counseling;
- (2) Enrollment one hundred one through two hundred fifty. A counselor must be a licensed teacher and must have a CD16 counselor designate credential with sixteen semester or twenty-four quarter hours of core graduate credit in guidance and counseling; and
  - (3) Enrollment two hundred fifty-one or more. A counselor must be a licensed teacher and must have a CG01 or CG03 credential. Services may also be provided in accordance with North Dakota Century Code section 15-36-18 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.
- b. Time assignment. One scheduled clock-hour per day or three hundred minutes per week for each eighty students must be provided to coordinate guidance and counseling services. Proportionate time allowances must be made for fractions thereof. One full-time counselor must be provided for each four hundred fifty students.
2. Middle level or junior high school counseling and guidance services must be provided by counselors employed in a school with enrollments in grades five through eight, six through eight, seven and eight, six through nine, and seven through nine.
- a. The qualifications for school counselors are determined by the total number of students in the schools served:
    - (1) Enrollment one hundred or fewer. A counselor must be a licensed teacher and must have a CD08 counselor designate credential with eight semester or twelve quarter hours of core graduate credit in guidance and counseling;
    - (2) Enrollment one hundred one through two hundred fifty. A counselor must be a licensed teacher and must have a CD16 counselor designate credential with sixteen semester or twenty-four quarter hours of core graduate credit in guidance and counseling; and
    - (3) Enrollment two hundred fifty-one or more. A counselor must be a licensed teacher and must have a CG01 or CG03 credential. Services may also be provided in accordance with North Dakota Century Code section 15-36-18 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.
  - b. Time assignment. One scheduled clock-hour per day or three hundred minutes per week for each eighty students

must be provided to coordinate guidance and counseling services. Proportionate time allowances must be made for fractions thereof. One full-time counselor must be provided for each four hundred fifty students.

3. Elementary school counseling and guidance services must be provided in a school with enrollments in kindergarten, kindergarten through grade six, and kindergarten through grade eight.
  - a. The qualifications for school counselors are determined by the total number of students in the schools served:
    - (1) Enrollment one hundred or fewer. A counselor must be a licensed teacher and must have a CD08 counselor designate credential with eight semester or twelve quarter hours of core graduate credit in guidance and counseling;
    - (2) Enrollment one hundred one through two hundred fifty. A counselor must be a licensed teacher and must have a CD16 counselor designate credential with sixteen semester or twenty-four quarter hours of core graduate credit in guidance and counseling; and
    - (3) Enrollment two hundred fifty-one or more. A counselor must be a licensed teacher and must have a CG01 or CG03 credential. Services may also be provided in accordance with North Dakota Century Code section 15-36-18 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.
  - b. Time assignment. One scheduled clock-hour per day or three hundred minutes per week for each one hundred students must be provided to coordinate guidance and counseling services. Proportionate time allowances must be made for fractions thereof. One full-time counselor must be provided for each five hundred students.
4. Social and psychological services must be available to address the needs of students with exceptional abilities, talents, or handicaps as described in the written program for pupil personnel services.
5. The school must coordinate health services, which may be provided by a school nurse, community health services, or local health department personnel and must include:
  - a. The identification, referral, and followup services as described in the written program for pupil personnel services; and

- b. Health and immunization records.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-41. Library media services.**

1. Each school must provide a library media program which ensures that students and staff are effective users of ideas and information.
2. A school must have a written description of the library media program, developed and reviewed periodically in cooperation with the library and instructional staff and on file with the department, which includes:
  - a. A mission or philosophy;
  - b. Goals and objectives;
  - c. The scope of services, personnel, resources, and equipment; and
  - d. The schedule of services that will be provided.
3. Qualifications for school library media personnel employed in a secondary, middle level or junior high, elementary, or centralized kindergarten through grade twelve library:
  - a. The qualifications for librarians are determined by the total number of students in the schools served:
    - (1) Enrollment in an elementary school, twenty-four or fewer. A librarian is not required;
    - (2) Enrollment one hundred or fewer. A librarian must be a licensed teacher and must have an LM04 librarian designate credential with eight semester or twelve quarter hours in library media education;
    - (3) Enrollment one hundred one through two hundred fifty. A librarian must be a licensed teacher and must have an LM03 librarian credential with sixteen semester or twenty-four quarter hours in library media education; and
    - (4) Enrollment two hundred fifty-one or more. A librarian must be a licensed teacher and must have an LM01 library media director or LM02 library media specialist credential. The LM01 credential requires a master's degree and at least twenty-six semester

hours or thirty-nine quarter hours in library media education and twelve semester or eighteen quarter hours in education. The LM02 credential requires twenty-six semester or thirty-nine quarter hours in library media education.

4. Time assignment. The time assignment for librarians is determined by the number of students served by the library as organized, e.g., kindergarten through grade twelve, kindergarten through grade six, or grades seven through twelve or nine through twelve:
  - a. Ninety minutes per day or four hundred fifty minutes per week for librarians serving fewer than one hundred students.
  - b. One hour per day for each eighty students for schools serving fewer than one hundred students.
  - c. Proportionate time allowances may be calculated only when the enrollment exceeds two hundred forty students.
  - d. Library media aide time assignments may be used for the time assignments required in excess of one full-time librarian.
5. An annual expenditure for books, newspapers, periodicals, and the rental or purchase of audiovisual materials and software, exclusive of textbooks and equipment, must average not less than ten dollars per student.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**67-19-01-42. School policies - Handbooks - Attendance - Promotion and retention.**

1. Handbooks, kindergarten through grade twelve:
  - a. Teacher handbook. A school must provide to each teacher a current handbook containing the rules and regulations that pertain to the duties and responsibilities of the teacher and the policies for the general operation of the school.
  - b. A school must provide to each student a current student and parent handbook that includes the school mission or philosophy, goals, and objectives and student rights and responsibilities and policies on parent and student issues that include:
    - (1) Attendance;

- (2) Discipline;
  - (3) Promotion and retention; and
  - (4) Graduation requirements.
2. A written school board policy must be adopted which specifies the attendance standards for all students in the school.
  3. A written school board policy must be adopted which states the standards and procedures for the promotion and retention of all students in the school.

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

**General Authority:** NDCC 15-21-04.1, 15-45-02

**Law Implemented:** NDCC 15-21-04.1, 15-45-02

**STAFF COMMENT:** Article 67-21 contains all new material and is not underscored so as to improve readability.

**ARTICLE 67-21**

**SCHOOL LUNCH PROGRAM**

Chapter  
67-21-01            School Lunch Program

**CHAPTER 67-21-01**  
**SCHOOL LUNCH PROGRAM**

| Section     |                                   |
|-------------|-----------------------------------|
| 67-21-01-01 | Purpose                           |
| 67-21-01-02 | State Agency                      |
| 67-21-01-03 | Use of Federal Rules and Policies |
| 67-21-01-04 | Eligibility                       |
| 67-21-01-05 | Application                       |
| 67-21-01-06 | Monitoring                        |
| 67-21-01-07 | Reimbursement Claims              |
| 67-21-01-08 | Meal Costs                        |
| 67-21-01-09 | Menus                             |
| 67-21-01-10 | Food Distribution                 |
| 67-21-01-11 | Health and Safety                 |
| 67-21-01-12 | Fiscal Management                 |
| 67-21-01-13 | Operating Report                  |

**67-21-01-01. Purpose.** The school lunch program, initiated at the federal level and in partnership with the states, is designed to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food by assisting the states, through grants-in-aid and other means, in providing an adequate supply of foods and facilities for the operation of the nonprofit school lunch program.

**History:** Effective January 1, 2000.  
**General Authority:** NDCC 15-54-02, 28-32-02  
**Law Implemented:** NDCC 15-54-01

**67-21-01-02. State agency.** The department of public instruction has been designated by the United States department of agriculture as

the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

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

**General Authority:** NDCC 15-54-02, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.2

**67-21-01-03. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the national school lunch program is governed by federal national school lunch program regulations. The local program must conform to lawfully issued rules and policies relating to the national school lunch program.

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

**General Authority:** NDCC 15-54-02, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210

**67-21-01-04. Eligibility.** Local agencies eligible for participation in school lunch programs include:

1. Educational units of high school grade or under, recognized as part of the educational system in the state;
2. Public or nonprofit private classes of pre-primary grade conducted in educational units as a part of the educational system in the state;
3. Public or nonprofit private residential institutions that operate principally for the care of children; and
4. Private institutions licensed by the department of human services to provide residential child care services.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.2

**67-21-01-05. Application.** Application forms are available at the department of public instruction, 600 east boulevard avenue, department 201, Bismarck, North Dakota 58505-0440. The application forms include:

1. Program agreement that includes:
  - a. Identification of the program or programs the local agency wants to participate in;
  - b. Verification that the local agency will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of

1975, and all provisions required by the implementing regulations of the United States department of agriculture. Signature by an authorized representative of the local agency will serve as verification; and

- c. Verification of agreement that the local agency agrees to compile data, maintain records, and submit reports as required and permit authorized personnel to review such records, books, and accounts as needed to ascertain compliance with the program. Signature by an authorized representative of the local agency will serve as verification. Such records must be maintained for three years after the end of the fiscal year to which they pertain.
2. Renewal agreement. This document is presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in July and must be returned for approval and renewal by September.
  3. Free or reduced-price policy statement and attachments. This document will be automatically renewed unless a new or updated statement is entered into by the state and local agency.
  4. The program agreement, in its entirety, stipulates that local agencies:
    - a. Maintain a nonprofit school food service program;
    - b. Limit its net cash resources to an amount that does not exceed three months' average expenditures;
    - c. Maintain a financial management system and comply with related requirements;
    - d. Serve meals that meet the minimum requirements;
    - e. Price meals as a unit;
    - f. Serve meals free or at a reduced price to all children who are determined by the local agency to be eligible for such meals;
    - g. Count meals served and claim reimbursement for reimbursable free, reduced-price, and paid meals;
    - h. Maintain proper sanitation and health standards in conformance with applicable state and local laws and regulations;
    - i. Accept and use donated foods offered by the United States department of agriculture, if desired;

- j. Maintain necessary facilities for storing, preparing, and serving food;
- k. Upon request, make all accounts and records pertaining to the program available to the state agency and to the United States department of agriculture; and
- l. Maintain files of currently approved and denied free and reduced-price applications or alternative documents and retain them for three years after the end of the fiscal year to which they pertain.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.9

**67-21-01-06. Monitoring.** The department of public instruction will conduct onsite reviews of local agency program operations once every four years for the purpose of providing guidance and technical assistance to local agency food service programs. All such reviews will include the assessment of claims by the state agency for any overpayment and appropriate corrective action.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210, 7 CFR 210.18

**67-21-01-07. Reimbursement claims.** Local agencies are required to submit claims for reimbursement using the basic claim for reimbursement form provided by the department of public instruction. Such claims are due on the tenth day of the month following the month of the claim. Federal and state reimbursement levels are determined on a periodic basis according to 7 CFR 210.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210

**67-21-01-08. Meal costs.** The local agency has complete discretion in establishing student meal prices. However, if student payments are required, they cannot exceed forty cents for a reduced-price lunch. Qualifying students shall receive lunch free or at a reduced price. Local agencies must agree to establish and use fair hearing procedures as stipulated in the free and reduced-price policy for households contesting the agency's decision regarding an application for reduced-price or free meals.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.14, 7 CFR 245

**67-21-01-09. Menus.** All lunch served under the program must meet the dietary guidelines for Americans as established by the federal regulations in 7 CFR 210.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.10

**67-21-01-10. Food distribution.** Local participating agencies receive commodities provided through the federal food distribution program through two categories:

1. Entitlement commodities, which are commodities that local agencies are entitled to receive under the regulation.
2. Bonus commodities, which are commodities that exceed the entitlement limits, are periodic, and are free to local agencies.

The amount of commodities for both categories to which local agencies are entitled is determined by 7 CFR 210 and 7 CFR 250 and the availability of the commodities.

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

**General Authority:** NDCC 15-54-02, 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.4

**67-21-01-11. Health and safety.** The local agency food service program must adhere to state and local health and food safety requirements, as adopted by the North Dakota state department of health, overviews of which are available from the department of public instruction. A school food service employee who functions as a food preparation site manager must complete training in food safety and sanitation as defined by the superintendent of public instruction.

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

**General Authority:** NDCC 15-54-03, 15-54-08, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.13

**67-21-01-12. Fiscal management.** Each local agency must maintain a financial management system to account for revenues and expenditures of its food service program. In local agencies that are public schools, ledgers must be designed to identify revenue and expenditure codes from the North Dakota school district financial report, which is available at the department of public instruction.

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

**General Authority:** NDCC 15-54-04, 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.14

**67-21-01-13. Operating report.** An operating form, available at the department of public instruction, must be filed by the local agency no later than July fifteenth of each year and before the renewal agreement for the subsequent year may be approved. The form allows for the reporting of revenue, expenses, and beginning and ending cash balances.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.15

**FEBRUARY 2000**

**STAFF COMMENT:** Article 67-11 contains all new material and is not underscored so as to improve readability.

**ARTICLE 67-11**

**EDUCATION PROFESSIONAL CREDENTIALS**

|          |   |
|----------|---|
| Chapter  |   |
| 67-11-01 | Driver Education Instructor's Credential                |
| 67-11-02 | Elementary Principal's Credential                       |
| 67-11-03 | Reading Credentials                                     |
| 67-11-04 | North Dakota Library Media Credential                   |
| 67-11-05 | School Counselor Credentials                            |
| 67-11-06 | Secondary Principal's Credential                        |
| 67-11-07 | Superintendent's Credential                             |
| 67-11-08 | Special Education Director's Credential                 |
| 67-11-09 | Early Childhood Special Education Teacher<br>Credential |
| 67-11-10 | Emotional Disturbance Teacher Credential                |
| 67-11-11 | Gifted and Talented Teacher Credential                  |
| 67-11-12 | Physical Disabilities Teacher Credential                |
| 67-11-13 | Specific Learning Disabilities Teacher<br>Credential    |
| 67-11-14 | Paraeducator Certificate of Completion                  |
| 67-11-15 | School Psychology Intern Approval                       |

**CHAPTER 67-11-01  
DRIVER EDUCATION INSTRUCTOR'S CREDENTIAL**

Section

|             |                      |
|-------------|----------------------|
| 67-11-01-01 | Credentials Required |
| 67-11-01-02 | Issuing Agency       |
| 67-11-01-03 | Type of Credential   |
| 67-11-01-04 | Credential Standards |
| 67-11-01-05 | Application Process  |
| 67-11-01-06 | Reconsideration      |

**67-11-01-01. Credentials required.** The driver education instructor of an accredited North Dakota school must hold the North Dakota driver education instructor's professional credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-02. Issuing agency.** The issuing agency address is:

Superintendent of Public Instruction  
 Department of Public Instruction  
 600 East Boulevard Avenue, Dept. 201  
 Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-03. Type of credential.** The North Dakota driver education instructor's professional credential is:

1. Issued and valid for as long as the instructor is a certified teacher; and
2. Issued upon evidence provided of fully satisfying credential standards identified in section 67-11-01-04.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-04. Credential standards.** The applicant must fulfill all of the following standards to obtain a credential under this chapter:

1. Must hold a valid regular North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1.

2. Must hold a valid operator's license suitable for the type of vehicle to be used.
3. Must have fewer than three moving traffic violations, no alcohol-related traffic violations within the previous twelve months, and a driving record free from repeated traffic law violations, as recorded in the office of the drivers license and traffic safety division of the North Dakota state department of transportation.
4. All teachers of driver education in North Dakota must have at least a college-granted minor in driver education or an equivalent to a minor that includes at least sixteen semester or twenty-four quarter hours in courses within the content areas listed below:
  - a. Basic driver education.
  - b. Advanced driver education.
  - c. First aid, a maximum of one semester hour will be applied.
  - d. Psychology courses, a maximum of six semester hours will be applied.
  - e. Methods and materials of teaching safety, a maximum of one semester hour audiovisual education will be applied.
  - f. Motorcycle safety education.
  - g. Traffic law.
  - h. Safety education.
  - i. Driver simulators and multicar driving range.
  - j. Stimulants and depressants as related to highway safety.
  - k. Principles of accident prevention.
  - l. Driver education for the handicapped.
  - m. Organization, administration, and supervision of safety education.
  - n. Current developments in driver and traffic safety education.
  - o. Automotive systems.
  - p. Defensive driving.
  - q. Field experience in safety education.

r. Driver education conference.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-05. Application process.** The application process to obtain a credential under this chapter is that the applicant shall:

1. Complete an application form provided by the department of public instruction including name, social security number, date, address, verification of teaching certificate, driver's license number, police record information related to traffic violations, and driver education-related coursework.
2. Provide a photocopy of an official college transcript that will be used to verify driver education coursework listed on the application.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-06. Reconsideration.** If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an applicant for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**CHAPTER 67-11-02  
ELEMENTARY PRINCIPAL'S CREDENTIAL**

|             |  |
|-------------|--|
| Section     |  |
| 67-11-02-01 | Credentials Required                             |
| 67-11-02-02 | Issuing Agency                                   |
| 67-11-02-03 | Types of Credentials                             |
| 67-11-02-04 | Approval for Educational Administration Programs |
| 67-11-02-05 | Credential Standards                             |
| 67-11-02-06 | Application Process                              |
| 67-11-02-07 | Renewal Requirements                             |
| 67-11-02-08 | Reconsideration                                  |

**67-11-02-01. Credentials required.** The principal of an accredited North Dakota elementary school must hold the North Dakota elementary principal's provisional credential, level II professional credential, or level I professional credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-02. Issuing agency.** The North Dakota elementary principal's credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-03. Types of credentials.**

1. A provisional credential is:
  - a. Issued as the initial credential and is valid for two years; and
  - b. Issued on the standards identified in section 67-11-02-05.
2. A level II professional credential is:
  - a. Issued for a five-year period with renewal available; and
  - b. Upon satisfying standards identified in subsections 1, 2, and 3 of section 67-11-02-05.

3. A level I professional credential is:
  - a. Issued for a five-year period with renewal available; and
  - b. Upon satisfying credential standards identified in subsections 1, 2, and 4 of section 67-11-02-05.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-04. Approval for educational administration programs.** Whenever this chapter refers to a "state-approved program" it refers to the process by which the education standards and practices board in consensus with the department of public instruction shall supervise a system of program approval at those colleges within the state of North Dakota which provide educational administration programs. Educational administration programs from other state or private colleges which meet state standards for program approval are listed in the manual on certification and preparation of education personnel in the United States and Canada published by the national association of state directors of teacher education and certification.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-05. Credential standards.** The documentation on each standard must be verified within the department before any credential will be issued.

1. The applicant must hold a valid North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable elementary major or minor or an endorsement in elementary education during the life of the credential.
2. The applicant must have at least three years of teaching or administrative experience or a combination thereof in elementary schools:
  - a. Equal to full-time equivalency, that is to equal at least five and one-half hours for a one hundred eighty-day school term.
  - b. Positions must have been stated on a professional contract.

3. The level II credential requires twenty semester hours of graduate credit in a master's degree program from a state-approved program in educational administration. Course preparation for the credential is as follows:
  - a. Leadership, planning, and organizational behavior in education.
  - b. Educational law and organizational structure of education.
  - c. Personnel, supervision, and staff development.
  - d. Curriculum, instruction, and learning theory.
  - e. Policy and educational finance.
  - f. Administration of the elementary school.
  - g. Elementary school curriculum.
4. The level I credential requires one of the following:
  - a. A master's degree in educational administration which includes coursework specific to the elementary level from a state-approved program. Course preparation of thirty-six credits must be from the following:
    - (1) Theory and practice of leadership and administration;
    - (2) Legal and political foundations of education;
    - (3) Supervision and staff development;
    - (4) Statistics, research, analysis, and writing;
    - (5) Educational foundations, curriculum, and instruction;
    - (6) Information systems for management and instruction;
    - (7) Administration of the elementary school; and
    - (8) Elementary school curriculum;
  - b. A master's degree with a major certifiable by the education standards and practices board. Twenty semester hours of credit that includes courses specific to the elementary level contained within a master's degree in educational administration from a state-approved program. Course preparation is as follows:
    - (1) Leadership, planning, and organizational behavior in education;

- (2) Educational law and organizational structure of education;
  - (3) Personnel, supervision, and staff development;
  - (4) Curriculum, instruction, and learning theory;
  - (5) Policy and educational finance;
  - (6) Administration of the elementary school; and
  - (7) Elementary school curriculum; or
- c. Completion of the school leaders licensure assessment prescribed and authorized by the superintendent of public instruction. This is a professional assessment based on model standards and developed jointly by the council of chief state school officers and the educational testing service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-06. Application process.** The application process to obtain a credential under this chapter requires submission of:

- 1. An application form provided by the department of public instruction including name, social security number, date, address, telephone number, teaching certificate type and number, employment information, academic preparation, and references;
- 2. A photocopy of official transcripts;
- 3. A letter of verification for applicants attending a North Dakota college with an approved program, attesting to the completion of the academic standard required for the level of credential requested. Applicants providing a photocopy of official transcripts from an approved college in another state will have the academic standard verification made by the department of public instruction; and
- 4. A letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-07. Renewal requirements.** To renew the level I and level II professional credentials, an individual must:

1. Submit one of the following:
  - a. A photocopy of official transcripts of eight semester hours of graduate work in education, of which four semester hours are in the area of educational administration;
  - b. A photocopy of official transcripts of four semester hours of graduate work in education and verification of attendance or participation in at least six educational conferences or workshops from the listing in this subdivision. The verification must be a signed statement by the conference or workshop sponsors, employer, or a school district business manager. Acceptable conferences or workshops are:
    - (1) North Dakota association of elementary principals state and area conferences or workshops;
    - (2) National association of elementary principals regional and national conferences or workshops;
    - (3) North Dakota association of school administrators state and area conferences or workshops;
    - (4) North central association annual and regional conferences or workshops;
    - (5) North Dakota council of educational leaders state and area conferences or workshops;
    - (6) North Dakota education association state and area conferences or workshops; or
    - (7) Department of public instruction annual conference or workshops; or
  - c. The school leaders licensure assessment prescribed and authorized by the superintendent of public instruction. This is a professional assessment based on model standards and developed jointly by the council of chief state school officers and the educational testing service; and
2. Submit a letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-02-08. Reconsideration.** If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**CHAPTER 67-11-03  
READING CREDENTIALS**

|             |                                   |
|-------------|-----------------------------------|
| Section     |                                   |
| 67-11-03-01 | Credentials Required              |
| 67-11-03-02 | Issuing Agency                    |
| 67-11-03-03 | Types of Credentials - Expiration |
| 67-11-03-04 | Credential Standards              |
| 67-11-03-05 | Application Process               |
| 67-11-03-06 | Renewal Requirements              |
| 67-11-03-07 | Reconsideration                   |

**67-11-03-01. Credentials required.** The reading teacher in a title I program of an accredited North Dakota school must hold the North Dakota reading credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-03-02. Issuing agency.** The North Dakota reading credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-03-03. Types of credentials - Expiration.** The types of reading credentials are:

1. The RE20 reading credential, which is issued to teachers who do not have three years of regular classroom teaching experience and meet all of the courses required for the elementary or secondary credential. The RE20 credential expiration date is the same as the expiration of the teaching certificate.
2. The RE01 elementary reading credential, which is issued to teachers who have completed three years of regular classroom teaching below grade nine and meet all the required coursework to obtain the RE01 credential. The RE01 credential expiration date is the same as the expiration date of the teaching certificate.

3. The RE02 secondary reading credential, which is issued to teachers who have completed three years of regular classroom teaching and meet all the required coursework to obtain the RE02 credential. The RE02 credential expiration date is the same as the expiration date of the teaching certificate.
4. The RE03 reading consultant or supervisor credential, which is issued to teachers who work directly with teachers, administrators, and other professionals within a school to develop and implement the reading program and meet all the coursework requirements to obtain the RE03 credential. The RE03 consultant or supervisor credential expiration date is the same as the expiration date of the teaching certificate.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-03-04. Credential standards.**

1. To be eligible for the RE01 elementary reading credential, the teacher must:
  - a. Have a valid North Dakota teaching certificate based on a bachelor's degree with an elementary content major or minor or an endorsement in elementary education as prescribed by the education and standards practices board;
  - b. Have a minimum of three years of classroom teaching below grade nine, in which the teaching of reading is part of the teaching responsibility. One year of teaching experience in basic skills in reading, library, or special education may be substituted for one year of this requirement;
  - c. Complete a planned program from a state-approved program in elementary, middle level, or secondary education which includes two semester or three quarter hours in each of the following content areas:
    - (1) Diagnosis and correction of reading disabilities;
    - (2) Clinical or laboratory practicum in reading; and
    - (3) Reading in the content areas; and
  - d. Complete a minimum of eight semester or twelve quarter hours in four of the following courses or content areas from a state-approved program in elementary, middle level, or secondary education. No more than two courses in each content area will qualify:

- (1) Early childhood;
  - (2) Research and the literature in reading or language arts;
  - (3) Exceptional child;
  - (4) Reading in the content areas;
  - (5) Creative language activities including poetry for children, storytelling, writing, and dramatics; and
  - (6) Curriculum development.
2. To be eligible for the RE02 secondary reading credential, the teacher must:
- a. Have a valid North Dakota teaching certificate based on a bachelor's degree with a middle level or secondary education content major or minor or an endorsement in middle level or secondary education as prescribed by the education standards and practices board;
  - b. Hold a college-granted major or minor in an English language arts area or have sixteen semester or twenty-four quarter hours of acceptable English language arts coursework;
  - c. Complete a minimum of three years of classroom teaching experience in which reading is part of the teaching responsibility. One year of basic skills in reading or special education may be substituted for one year of this requirement; and
  - d. Complete a planned program from a state-approved program in elementary, middle level, or secondary education which must provide a minimum of sixteen semester or twenty-four quarter hours of coursework including the following:
    - (1) A minimum of two semester or three quarter hours in each of the following content areas:
      - (a) Foundations or survey of reading;
      - (b) Reading in the secondary school;
      - (c) Diagnosis and correction of reading disabilities; and
      - (d) Clinical or laboratory practicum in reading with secondary students; and

- (2) A total of eight semester or twelve quarter hours in four of the following courses or content areas from a state-approved program in elementary, middle level, or secondary education. No more than two courses in each content area will qualify:
  - (a) Research and the literature in reading or language arts;
  - (b) Exceptional child;
  - (c) Curriculum development;
  - (d) English education methods;
  - (e) Reading in the content areas; and
  - (f) Creative language activities including poetry for adolescents, storytelling, writing, and dramatics.
3. To be eligible for the RE03 reading consultant or supervisor credential, the teacher must:
  - a. Meet the standards of the elementary credential or the secondary credential;
  - b. Complete two years' teaching experience as an RE01 elementary or an RE02 secondary reading credential teacher; and
  - c. Hold a master's degree, which includes a minimum of two semester or three quarter hours of graduate credit in each of the following content areas:
    - (1) Advanced work in the diagnosis and remediation of reading difficulties;
    - (2) Advanced work in clinical or laboratory practicum in the diagnosis and remediation of reading difficulties;
    - (3) Current research in reading and language arts;
    - (4) Elementary or secondary curriculum development and supervision;
    - (5) School administration procedures; and
    - (6) Reading in the content areas.
4. To be eligible for the RE20 reading credential, a teacher must:

- a. Have a valid North Dakota teaching certificate based on a bachelor's degree with an elementary, middle level, or secondary education content major or minor or an endorsement in elementary, middle level, or secondary education as prescribed by the North Dakota education standards and practices board; and
- b. Must complete either the RE01 elementary or RE02 secondary coursework requirements as required in subdivisions c and d of subsection 1 or subdivision d of subsection 2.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-03-05. Application process.** The application process to obtain a credential under this chapter requires submission of:

1. A completed application form provided by the department of public instruction including name, social security number, date, address, telephone number, reading credential type applied for, employment information, references, and signature;
2. A photocopy of official transcripts; and
3. A letter of recommendation signed by a principal or superintendent verifying a minimum of three years of classroom experience and professional work.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-03-06. Renewal requirements.** The applicant for renewal of a credential issued under this chapter must:

1. Renew prior to the expiration of the applicant's teaching certificate;
2. Complete four semester or six quarter hours of graduate level credit in reading-related areas during the duration of the credential;
3. Provide a photocopy of official transcripts;
4. Submit a completed application form provided by the department of public instruction requesting name, social security number, date, address, telephone number, type of credential being renewed, employment information, and signature; and

5. Renew the reading credential every five years if the applicant has a life teacher certificate.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-03-07. Reconsideration.** If the credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If the credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**CHAPTER 67-11-04  
NORTH DAKOTA LIBRARY MEDIA CREDENTIAL**

|             |   |
|-------------|---|
| Section     |   |
| 67-11-04-01 | Library Media Credential                      |
| 67-11-04-02 | Issuing Agency                                |
| 67-11-04-03 | Program Approval for Library Media Coursework |
| 67-11-04-04 | Types of Credentials                          |
| 67-11-04-05 | Course Preparation for Credentials            |
| 67-11-04-06 | Application Process                           |
| 67-11-04-07 | Renewal Requirements                          |
| 67-11-04-08 | Reconsideration                               |

**67-11-04-01. Library media credential.** The librarians of accredited North Dakota schools must hold a library media credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-02. Issuing agency.** The North Dakota library media credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-03. Program approval for library media coursework.** Whenever this chapter refers to "approved state program" it refers to the process by which the education standards and practices board supervises a system of teacher education program approval or, in concert with the department of public instruction, an educational administration program at those colleges within the state of North Dakota. Programs from other state or private colleges which meet the state standards for program approval are listed in a publication published by the national association of state directors of teacher education and certification, which will serve as reference.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-04. Types of credentials.**

**1. Library media director credential.**

- a. This credential will be known as the LM01 credential.
- b. The applicant must meet all of the following standards:
  - (1) A valid North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education;
  - (2) A master's degree in library science, media education, education, or education administration from an approved state program; and
  - (3) Completion of sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05, ten semester hours of coursework under subsection 3 of section 67-11-04-05, and twelve semester hours of coursework under subsection 4 of section 67-11-04-05 from an approved state program.
- c. The credential is valid for five years, provided the holder has a valid North Dakota teaching certificate during that period, and is renewable for five-year terms.

**2. Library media specialist credential.**

- a. This credential will be known as the LM02 credential.
- b. The applicant must meet all of the following standards:
  - (1) A valid North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and
  - (2) Completion of sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05 and ten semester hours of coursework under subsection 3 of section 67-11-04-05 from an approved state program.
- c. The credential is valid for five years, provided the holder has a valid North Dakota teaching certificate during that period, and is renewable for five-year terms.

**3. Librarian credential.**

- a. This credential will be known as the LM03 credential.
- b. The applicant must meet all of the following standards:
  - (1) A valid North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and
  - (2) Completion of sixteen semester hours of library coursework under subsection 2 of section 67-11-04-05 from an approved state program.
- c. The credential is valid for five years, provided the holder has a valid North Dakota teaching certificate during that period, and is renewable for five-year terms.

**4. Librarian designate credential.**

- a. This credential will be known as the LM04 credential.
- b. The applicant must meet all of the following standards:
  - (1) A valid North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and
  - (2) Completion of eight semester hours of library coursework under subsection 2 of section 67-11-04-05 from an approved state program.
- c. The credential is valid for five years, provided the holder has a valid North Dakota teaching certificate during that period, and may not be renewed.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-05. Course preparation for credentials.**

- 1. Coursework may be either on the graduate or undergraduate level.

2. Coursework required for the library media director, library media specialist, librarian, and librarian designate credentials identified in section 67-11-04-04 must be taken in the following areas:
  - a. Library administration;
  - b. Reference;
  - c. Classification and cataloging of print materials;
  - d. Adolescent and children's literature;
  - e. Selection of print materials; and
  - f. Utilization of print materials.
3. Coursework required for the library media director and library media specialist credentials identified in section 67-11-04-04 must be taken in the following areas:
  - a. Classification and cataloging of nonprint materials;
  - b. Selection of print and nonprint materials;
  - c. Materials for elementary and secondary education;
  - d. Communication theory, theory and principles of message design;
  - e. Special problems in media, a maximum of four semester hours will apply;
  - f. Reading, listening, viewing, and guidance;
  - g. Television;
  - h. Computers and computer-assisted instruction; and
  - i. Design and production of media is required.
4. Coursework required for the library media director credential identified in section 67-11-04-04 must be taken in the following areas:
  - a. Educational administration;
  - b. Elementary and secondary curriculum;
  - c. Supervision;
  - d. School finance;

- e. School law;
- f. Educational psychology; and
- g. Philosophy of education.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-06. Application process.**

**1. Initial application.**

- a. An application form provided by the department of public instruction must be submitted including name, social security number, address, teaching certificate type and number, credential type requested, employment information, and academic preparation; and
- b. A photocopy of official transcripts must be provided.

**2. Upgrading of credential.**

- a. An application form provided by the department of public instruction must be submitted including name, social security number, address, teaching certificate type and number, credential type requested, employment information, and academic preparation; and
- b. A photocopy of official transcripts must be provided.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-07. Renewal requirements.**

- 1. Each credential is valid for five years provided the holder has a valid North Dakota teaching certificate during that period.
- 2. All library media director, library media specialist, and librarian credentials are renewed by meeting the following:
  - a. An application form provided by the department of public instruction must be submitted including name, social security number, address, teaching certificate type and number, credential type and number, employment information, and academic preparation;

- b. A photocopy of official transcripts must be provided documenting completion of four semester hours of undergraduate or graduate credit in the areas of library, media, education, curriculum, or communication; and
- c. A letter of recommendation must be submitted signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-04-08. Reconsideration.** If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**CHAPTER 67-11-05  
SCHOOL COUNSELOR CREDENTIALS**

|                |                                |
|----------------|--------------------------------|
| <b>Section</b> |                                |
| 67-11-05-01    | Credentials Required           |
| 67-11-05-02    | Issuing Agency                 |
| 67-11-05-03    | Types of Counselor Credentials |
| 67-11-05-04    | Credential Standards           |
| 67-11-05-05    | Application Process            |
| 67-11-05-06    | Renewal Requirements           |
| 67-11-05-07    | Reconsideration                |

**67-11-05-01. Credentials required.** Except as provided in North Dakota Century Code section 15-36-18, the counselor of an accredited North Dakota school must hold the North Dakota school counselor credential or the counselor designate credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**67-11-05-02. Issuing agency.** The North Dakota school counselor credentials issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**67-11-05-03. Types of counselor credentials.**

**1. Counselor designate credentials CD08 and CD16.**

**a. The CD08 credential:**

(1) Is valid for five years; and

(2) Must be upgraded to a CD16 credential within five years.

**b. The CD16 credential:**

(1) Is valid for a five-year term; and

- (2) Is renewable provided the individual has met renewal requirements.

**2. School counselor credential.**

- a. This credential shall be known as the CG01 for secondary education, CG02 for elementary education, and CG03 for kindergarten through grade twelve.
- b. This credential is valid for a maximum of five years. It is renewable provided the individual has met renewal requirements.
- c. A one-year credential may be issued to a person seeking to work as a school counselor through provisions in North Dakota Century Code section 15-36-18.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**67-11-05-04. Credential standards.**

**1. School counselor credential standards. The counselor must:**

- a. Hold a valid teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 except as provided through provisions in North Dakota Century Code section 15-36-18;
- b. Have two years of successful experience in teaching or a related human service field except as provided through provisions in North Dakota Century Code section 15-36-18;
- c. Obtain a favorable letter of recommendation from the counselor's state-approved school counseling program advisor; and
- d. Have a master's degree with an emphasis in school counseling which must include:
  - (1) The following graduate core coursework content from a state-approved school counseling program:
    - (a) Introduction to elementary counseling is required for the CG02 and CG03;
    - (b) Introduction to secondary counseling is required for the CG01 and CG03;

(c) School-based supervised internship in school counseling for a minimum of six semester hours, nine quarter hours, or four hundred fifty contact hours:

[1] The school counselor credential CG01 requires school-based internship at the secondary level;

[2] The school counselor credential CG02 requires school-based internship at the elementary level; and

[3] The school counselor credential CG03 requires school-based internship with at least two semester hours at the elementary level and at least two semester hours at the secondary level; and

(d) Guidance administration and consulting; and

(2) The following graduate counseling core coursework content from a state-approved school counseling program or other state-approved counseling or psychology program:

(a) Counseling theories;

(b) Assessment techniques;

(c) Group techniques or group dynamics;

(d) Career counseling and testing; and

(e) Counseling techniques.

2. **Counselor designate credential standards.** The counselor designate must:

a. Hold a valid teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-36-18 and North Dakota Administrative Code title 67.1;

b. Have completed a minimum of eight semester hours of counseling core courses from either a state-approved school counseling program or other state-approved counseling program to meet the requirements of the CD08. After five years the applicant must have completed the requirements of the counselor designate credential CD16;

c. Have completed a minimum of sixteen semester hours of counseling core courses from either a state-approved

school counseling program or other state-approved counseling program to meet the requirements of the counselor designate credential CD16; and

- d. Provide an approved program of study from a state-approved school counseling program.
3. In this chapter "state-approved school counseling program" means approved school guidance counselor programs identified in the manual on certification and preparation of education personnel in the United States and Canada published by the national association of state directors of teacher education and certification.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**67-11-05-05. Application process.**

1. **Counselor designate credentials.** The applicant must:
  - a. Submit a completed application form provided by the department of public instruction. The application form requires the applicant's name, social security number, address, school and grade levels served, type of teaching certificate and teaching certificate number, references, and teaching, counseling, and administrative experience;
  - b. Provide a copy of an official transcript;
  - c. Submit a copy of an approved program of study from a state-approved school counseling program; and
  - d. Provide a letter of recommendation from a master's program advisor, practicum advisor, or a counselor educator who has personal knowledge of the applicant's training.
2. **School counselor credential.** The applicant must:
  - a. Submit a completed application form provided by the department of public instruction. The application form requires the applicant's name, social security number, address, school and grade levels served, type of teaching certificate and teaching certificate number, references, date of the application, and teaching, counseling, and administrative experience;
  - b. Provide a copy of an official transcript;

- c. Have two years of successful experience in teaching or a related human service field except as provided for in North Dakota Century Code section 15-36-18;
- d. Provide a letter of recommendation from the applicant's advisor or other counselor educator from a state-approved school counseling program; and
- e. Have a professor from a state-approved school counseling program provide a letter detailing the school-based internship including the following:
  - (1) Grade levels involved in the internship experience;
  - (2) The name of the school where the internship occurred;
  - (3) The number of graduate semester hours or graduate quarter hours; and
  - (4) The total number of contact hours involved in the school-based internship.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**67-11-05-06. Renewal requirements.**

- 1. To renew a credential under this chapter, the applicant must:
  - a. Provide copies of official transcripts for the completion of four semester hours of graduate coursework in education, of which two semester hours must be in the area of counseling. Up to two of the required four semester hours may be replaced by thirty clock-hours in counseling with a signed verification of attendance or participation by the conference or workshop sponsor, the employer, or a school district business manager;
  - b. Provide a letter of recommendation from a supervisor from either a past employing school district or other past employer where counseling services were provided; and
  - c. Hold a valid teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-36-18 and North Dakota Administrative Code title 67.1.

2. Renewals for less than five years may be granted upon request of the applicant. The number of semester hours needed for renewal will be calculated on a one semester hour per year basis.

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

**General Authority:** NDCC 15.1-02-04, 28-32-01, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**67-11-05-07. Reconsideration.** If issuance or renewal of the credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If the credential under this chapter is denied, the applicant may request a reconsideration of the decision. A written request for reconsideration must be received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant'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 three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15-20.4-03, 15-36-18, 15.1-02-04, 15.1-02-11

**CHAPTER 67-11-06  
SECONDARY PRINCIPAL'S CREDENTIAL**

|             |  |
|-------------|--|
| Section     |  |
| 67-11-06-01 | Credentials Required                                 |
| 67-11-06-02 | Issuing Agency                                       |
| 67-11-06-03 | Types of Credentials                                 |
| 67-11-06-04 | Approval for Educational Administration Programs     |
| 67-11-06-05 | Credential Standards                                 |
| 67-11-06-06 | Application Process                                  |
| 67-11-06-07 | Renewal Requirements                                 |
| 67-11-06-08 | Reconsideration                                      |
| 67-11-06-09 | Extension of the Secondary Principal Credential SP03 |

**67-11-06-01. Credentials required.** The secondary principal of an accredited North Dakota school must hold the North Dakota secondary principal's provisional or professional credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-02. Issuing agency.** The North Dakota secondary principal's credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-03. Types of credentials.**

1. A provisional credential is issued:
  - a. As the initial credential and is valid for two years; and
  - b. On the standards identified in section 67-11-06-05.
2. A level II professional credential is issued:
  - a. For a five-year period with renewal available; and
  - b. Upon satisfying standards identified in subsections 1, 2, and 3 of section 67-11-06-05.

3. A level I professional credential is issued:
  - a. For a five-year period with renewal available; and
  - b. Upon satisfying credential standards identified in subsections 1, 2, and 4 of section 67-11-06-05.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-04. Approval for educational administration programs.** Whenever this chapter refers to a "state-approved program" it refers to the process by which the education standards and practices board in consensus with the department of public instruction shall supervise a system of program approval at those colleges within the state of North Dakota which provide educational administration programs. Educational administration programs from other state or private colleges which meet state standards for program approval are listed in the manual on certification and preparation of education personnel in the United States and Canada published by the national association of state directors of teacher education and certification.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-05. Credential standards.** The documentation on each standard must be verified within the department before any credential will be issued.

1. An applicant must hold a valid North Dakota teaching certificate issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 based on a bachelor's degree with a certifiable major or minor or an endorsement in secondary education during the life of the credential.
2. An applicant must have at least three years of teaching or administrative experience or a combination thereof in secondary schools:
  - a. Equal to full-time equivalency, that is to equal at least six hours for a one hundred eighty-day school term.
  - b. Positions must have been stated on a professional contract.
3. The level II credential requires twenty semester hours of graduate credit taken in a master's degree program from a

state-approved program in educational administration. Course preparation for the credential is as follows:

- a. Leadership, planning, and organizational behavior in education.
  - b. Educational law and organizational structure of education.
  - c. Personnel, supervision, and staff development.
  - d. Curriculum, instruction, and learning theory.
  - e. Policy and educational finance.
  - f. Administration of the secondary school.
  - g. Secondary school curriculum.
4. The level I credential requires one of the following:
- a. A master's degree in educational administration from a state-approved program. Course preparation of thirty-six credits must be from the following:
    - (1) Theory and practice of leadership and administration;
    - (2) Legal and political foundations of education;
    - (3) Supervision and staff development;
    - (4) Statistics, research, analysis, and writing;
    - (5) Educational foundations, curriculum, and instruction;
    - (6) Information systems for management and instruction;
    - (7) Administration of the secondary school; and
    - (8) Secondary school curriculum;
  - b. A master's degree with a major certifiable by the education standards and practices board in addition to twenty semester hours of credit that includes courses specific to the secondary level contained within a master's degree in educational administration from a state-approved program. Course preparation is as follows:
    - (1) Leadership, planning, and organizational behavior in education;
    - (2) Educational law and organizational structure of education;

- (3) Personnel, supervision, and staff development;
  - (4) Curriculum, instruction, and learning theory;
  - (5) Policy and educational finance;
  - (6) Administration of the secondary school; and
  - (7) Secondary school curriculum; or
- c. Completion of the school leaders licensure assessment prescribed and authorized by the superintendent of public instruction. This is a professional assessment based on model standards and developed jointly by the council of chief state school officers and the educational testing service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-06. Application process.** The application process to obtain a credential under this chapter is:

1. An application form provided by the department of public instruction must be submitted, including the applicant's name, social security number, date, address, telephone number, teaching certificate type and number, employment information, academic preparation, and references;
2. A photocopy of official transcripts must be provided;
3. A letter of verification must be provided for applicants attending a North Dakota college with an approved program, attesting to the completion of the academic standard required for the level of the credential requested. Applicants providing a photocopy of official transcripts from an approved college in another state must have the academic standard verification made by the department of public instruction; and
4. A letter of recommendation must be provided signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-07. Renewal requirements.** To renew the level I and level II professional credentials, an individual shall:

1. Submit one of the following:
  - a. A photocopy of official transcripts of eight semester hours of graduate work in education, of which four semester hours are in the area of educational administration;
  - b. A photocopy of official transcripts of four semester hours of graduate work in education and verification of attendance or participation in at least six educational conferences or workshops from the listing in this subdivision. The verification must be a signed statement by the conference or workshop sponsors, employer, or a school district business manager. Acceptable conferences or workshops are:
    - (1) North Dakota association of secondary school principals state and area conferences or workshops;
    - (2) National association of secondary school principals regional and national conferences or workshops;
    - (3) North Dakota council of educational leaders state and area conferences or workshops;
    - (4) American association of school administrators regional and national conferences or workshops;
    - (5) North central association annual or regional conferences or workshops; and
    - (6) Department of public instruction conferences or workshops; or
  - c. Complete the school leaders licensure assessment and meet or exceed the cutoff score. This is a professional assessment based on model standards and developed jointly by the council of chief state school officers and the educational testing service; and
2. Submit a letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-08. Reconsideration.** If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an application for issuance

or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-06-09. Extension of the secondary principal credential SP03.** For the initial implementation of this chapter an exception has been included for those individuals who are contracted to a district as of February 1, 2000, and are serving with a secondary principal credential entitled SP03. The following criteria for extension will apply until June 30, 2005:

1. A secondary principal credential SP03 renewable only for continuing at the individual's present district until the final expiration date of June 30, 2005.
2. To renew a present credential, if it expires before final expiration, the individual must submit the information required in subsection 2 of section 67-11-06-06.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**CHAPTER 67-11-07  
SUPERINTENDENT'S CREDENTIAL**

|             |  |
|-------------|--|
| Section     |  |
| 67-11-07-01 | Credentials Required                             |
| 67-11-07-02 | Issuing Agency                                   |
| 67-11-07-03 | Types of Credentials                             |
| 67-11-07-04 | Approval for Educational Administration Programs |
| 67-11-07-05 | Credential Standards                             |
| 67-11-07-06 | Application Process                              |
| 67-11-07-07 | Renewal Requirements                             |
| 67-11-07-08 | Reconsideration                                  |

**67-11-07-01. Credentials required.** The superintendent of an accredited North Dakota school must hold the North Dakota superintendent's provisional or professional credential.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-02. Issuing agency.** The North Dakota superintendent's credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-03. Types of credentials.**

1. The provisional credential is issued:

- a. As the initial credential and is valid for one year and subject to automatic extension upon request until the credential holder is able to fulfill the year of service as an assistant superintendent or superintendent or completion of all necessary course requirements, or both; and

- b. On the basis of satisfying standards identified in section 67-11-07-05 or being able to satisfy those standards within the period of the provisional credential.

2. The professional credential is issued:

- a. For five years with renewal available; and
- b. Upon satisfying standards identified in section 67-11-07-05.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-04. Approval for educational administration programs.** Whenever this chapter refers to a "state-approved program" it refers to the process by which the education standards and practices board in consensus with the department of public instruction shall supervise a system of program approval at those colleges within the state of North Dakota which provide educational administration programs. Educational administration programs from other state or private colleges which meet state standards for program approval are listed in the manual on certification and preparation of education personnel in the United States and Canada published by the national association of state directors of teacher education and certification.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-05. Credential standards.** The applicant must fulfill all the following standards to obtain a credential under this chapter. The applicant must:

1. Hold a valid North Dakota teaching certificate during the life of the credential, issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1;
2. Have at least three years of teaching experience, verified in a letter of recommendation by a supervisor or employer who has firsthand knowledge of the individual's professional work;
3. Have at least two years of administrative experience comprised of at least half time as an elementary or secondary principal in an approved school, a central office director in an approved school district of at least three thousand enrollment, or an administrator of an approved school with a twelve-year program. This experience is to be verified by a supervisor or employer who has firsthand knowledge of the individual's professional work; and
4. Have one of the following:

- a. A master's degree in educational administration from a state-approved college program specific to superintendency and course preparation of forty-four to forty-seven credits from the following:
- (1) Theory and practice of leadership and administration;
  - (2) Legal and political foundations of education;
  - (3) Supervision and staff development;
  - (4) Statistics, research, analysis, and writing;
  - (5) Foundations, curriculum, and instruction;
  - (6) Systems for management and instruction;
  - (7) Administration of the elementary school;
  - (8) Administration of the secondary school;
  - (9) Seminar: the superintendent;
  - (10) Practicum: superintendent;
  - (11) Elementary school curriculum;
  - (12) Secondary school curriculum; and
  - (13) School finance and business management; or
- b. A master's degree with a major certifiable by the education standards and practices board, twenty semester hours of graduate credit from a state-approved college program specific to superintendency, and course preparation as follows:
- (1) Leadership, planning, and organizational behavior in education;
  - (2) Educational law and organizational structure;
  - (3) Personnel, supervision, and staff development;
  - (4) Curriculum, instruction, and learning theory;
  - (5) Policy and educational finance;
  - (6) Seminar: the superintendent;
  - (7) Practicum: superintendent; and
  - (8) School finance and business management.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-06. Application process.** The application process to obtain a credential under this chapter is:

1. **Provisional credential.** The applicant must submit:
  - a. A completed application form provided by the department of public instruction, including the applicant's name, social security number, date, address, telephone number, teaching certificate type and number, employment information, academic preparation, and references;
  - b. A photocopy of official transcripts;
  - c. A letter of verification for applicants attending a North Dakota college with an approved program, attesting to the completion of the academic standard required for the level of the credential requested. Applicants providing a photocopy of official transcripts from an approved college in another state will have the academic standard verification made by the department of public instruction; and
  - d. A letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.
2. **Professional credential.** The applicant must submit:
  - a. Verification of graduate coursework by presenting a photocopy of official transcripts. Also accepted is verification of successful course completion or documentation pending transcript. If transcripts do not arrive, the credential will be revoked; and
  - b. A letter of recommendation signed by a supervisor or employer verifying one year of service as an assistant superintendent or superintendent who has firsthand

knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-07. Renewal requirements.** The applicant for renewal of a credential issued under this chapter must:

1. Fulfill one of the following:
  - a. Provide a photocopy of official transcripts showing satisfactory completion of at least eight semester hours of graduate work in education, of which four semester hours are in the area of educational administration; or
  - b. Provide a photocopy of official transcripts showing completion of at least four semester hours of graduate work and verification of attendance or participation in at least six administrative educational conferences or workshops from the listing in this subdivision. The verification must be a signed statement by the conference or workshop sponsors, the employer, or a school district business manager. Acceptable conferences or workshops are:
    - (1) North Dakota association of school administrators state and area conferences or workshops;
    - (2) American association of school administrators regional and national conferences or workshops;
    - (3) North central association annual or regional conferences or workshops;
    - (4) Department of public instruction conferences or workshops; and
    - (5) North Dakota council of educational leaders conferences or workshops; and
2. Provide a letter of recommendation signed by a supervisor or employer who has firsthand knowledge of the individual's professional work, experience, and service.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**67-11-07-08. Reconsideration.** If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and notify the applicant of the opportunity for reconsideration. If an application for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11

**CHAPTER 67-11-08  
SPECIAL EDUCATION DIRECTOR'S CREDENTIAL**

|             |                        |
|-------------|------------------------|
| Section     |                        |
| 67-11-08-01 | Credentials Required   |
| 67-11-08-02 | Issuing Agency         |
| 67-11-08-03 | Credential Standards   |
| 67-11-08-04 | Types of Credentials   |
| 67-11-08-05 | Application Process    |
| 67-11-08-06 | Renewal Requirements   |
| 67-11-08-07 | Notification of Denial |
| 67-11-08-08 | Effective Dates        |

**67-11-08-01. Credentials required.** A special education director must hold the North Dakota special education director's credential.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-02. Issuing agency.** The North Dakota special education director's credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-03. Credential standards.** The documentation on each standard must be verified within the department before any credential will be issued. An applicant must have:

1. A valid North Dakota teaching license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement;
2. A master's degree, preferably in special education;
3. Basic preparation in one area of special education which will entitle the applicant to the special education credential for North Dakota in that area;

4. An additional nine semester hours in more than one other area of special education;
5. Eight semester hours in school administration or a four-semester-hour internship in administration of special education and two semester hours in school administration. The eight semester hours in school administration should be chosen from courses in school law, administration of the public school, school finance, teacher personnel administration, or a seminar in administration;
6. At least two years of successful experience in one area of special education; and
7. Recommendation from supervisors of practicum experiences.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-04. Types of credentials.** The professional credential is issued and is valid for the same period as the teaching license and is issued on the standards identified in section 67-11-08-03.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education director's credential application form provided by the department of public instruction must be submitted including the applicant's name, social security number, date, address, telephone number, teaching certificate number and expiration date, signature, employment information, academic preparation, references; and
2. A photocopy of official transcripts must be provided.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-06. Renewal requirements.** To renew the credential, an individual must complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota teacher's license. The special education director's credential follows the expiration date established by the education

standards and practices board. No further action is required on the part of the teacher to renew a special education credential.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-07. Notification of denial.** If issuance or renewal of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include requirements for completion for issuance or renewal of a credential.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-08-08. Effective dates.** The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

1. Issuing new credentials:

- a. Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.
- b. Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.

2. Renewing existing credentials. Effective on February 1, 2000, all credential renewals shall be based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**CHAPTER 67-11-09  
EARLY CHILDHOOD SPECIAL EDUCATION TEACHER CREDENTIAL**

|             |                        |
|-------------|------------------------|
| Section     |                        |
| 67-11-09-01 | Credentials Required   |
| 67-11-09-02 | Issuing Agency         |
| 67-11-09-03 | Credential Standards   |
| 67-11-09-04 | Types of Credentials   |
| 67-11-09-05 | Application Process    |
| 67-11-09-06 | Renewal Requirements   |
| 67-11-09-07 | Notification of Denial |
| 67-11-09-08 | Effective Dates        |

**67-11-09-01. Credentials required.** A teacher of early childhood special education students must hold the North Dakota special education professional credential in early childhood special education.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(14)

**67-11-09-02. Issuing agency.** The North Dakota special education teaching credential in early childhood special education issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-09-03. Credential standards.** The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. An applicant must hold a valid North Dakota teaching license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01, 15-36-11, and 15-38-18 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or kindergarten education.
2. Areas of preparation of early childhood special education teachers include the coursework listed in this subsection. The coursework should be taken primarily at graduate level

from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants should have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as early childhood special education teachers are required to meet the requirements for a general elementary or kindergarten educator's professional license. The credential requires at least twenty-four semester hours of graduate credit in these areas:

- a. Exceptional children and youth.
- b. Assessment of preschool children with disabilities.
- c. Child development.
- d. Home and school relations or parents, the school, and community agencies.
- e. Characteristics of preschool children with disabilities.
- f. Methods and materials in education of preschool children with disabilities.
- g. An additional course in education of preschool children with disabilities.
- h. Practicum working with preschool children with disabilities, as outlined by the college or university. It is typical that limited practicum experiences are included in many of the courses in this subsection. This final practicum in working with preschool children with disabilities should be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

#### **67-11-09-04. Types of credentials.**

1. The professional credential is:
  - a. Issued and is valid for the same period as the teaching license; and
  - b. Issued on the standards identified in section 67-11-09-03.

2. Provisional letter of approval.
  - a. A letter of approval is issued and is valid for one school year, including the following summer. The letter of approval may be renewed for up to three consecutive years.
  - b. Approval is based on documentation of general education teaching experiences, a current teaching license, a program of study based on the standards identified in section 67-11-09-03 outlined by a college or university with an accredited training program, and a copy of current transcripts.
  - c. Approval is based on the school district's description of the need for the position and the plan of supervision of the teacher in training by a qualified early childhood special education teacher.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-09-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the early childhood special education credential. Information including the date and the applicant's name, social security number, address, telephone number, teaching certificate number and expiration date, signature, and academic preparation is required in the application.
2. A photocopy of official transcripts must be provided.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-09-06. Renewal requirements.** To renew the early childhood special education credential, the teacher must:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota teacher's license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.

2. In those instances in which a significant lapse of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-09-07. Notification of denial.** If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-09-03 which must be completed for reconsideration.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-09-08. Effective dates.** The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

1. Issuing new credentials:

- a. Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.
- b. Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.

2. Renewing existing credentials. Effective on February 1, 2000, all credential renewals shall be based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**CHAPTER 67-11-10  
EMOTIONAL DISTURBANCE TEACHER CREDENTIAL**

|             |                        |
|-------------|------------------------|
| Section     |                        |
| 67-11-10-01 | Credentials Required   |
| 67-11-10-02 | Issuing Agency         |
| 67-11-10-03 | Credential Standards   |
| 67-11-10-04 | Types of Credentials   |
| 67-11-10-05 | Application Process    |
| 67-11-10-06 | Renewal Requirements   |
| 67-11-10-07 | Notification of Denial |
| 67-11-10-08 | Effective Dates        |

**67-11-10-01. Credentials required.** A teacher of students with emotional disturbance must hold the North Dakota special education professional credential in emotional disturbance.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(14)

**67-11-10-02. Issuing agency.** The North Dakota special education teaching credential in emotional disturbance issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-10-03. Credential standards.** The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. An applicant must hold a valid North Dakota teaching license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01, 15-36-11, and 15-38-18 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. Areas of preparation of teachers in emotional disturbance include the coursework listed in this subsection. The coursework should be taken primarily at the graduate level from a college or university with accreditation in this area

and offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants should have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as emotional disturbance teachers are required to meet the requirements for either an elementary or secondary educator's professional license. Emotional disturbance teachers with a secondary teaching license must have an elementary mathematics methods and an elementary reading methods course. The credential requires at least twenty-four semester hours of graduate credit in these areas:

- a. Exceptional children and youth.
- b. Introduction to the area of emotional disturbance, which includes psychopathology of childhood and adolescence.
- c. Methods of teaching children with emotional disturbance.
- d. Developmental psychology.
- e. Behavior management, which typically includes a study of student reaction to frustration, response to failure, emotional problems, and ways of managing problems in the classroom.
- f. Assessment and test interpretation of children and youth with disabilities. This should not be primarily the administration of tests but rather contain considerable experience in the use of information from tests as they relate to curriculum, adjustment, and behavior.
- g. Methods and materials in specific learning disabilities. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification and other applied learning theory; or specific learning disability practicum.
- h. Interdisciplinary and community resources and consultation skills.
- i. Family or home school relations.
- j. Guidance or educational alternatives.
- k. A complete practicum in emotional disturbance as outlined by the college or university. It is typical that limited practicum experiences are included in many of the courses in this subsection. This final practicum in working with children with emotional disturbance should be provided after other qualifications are met. If the practicum is

offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement.

3. For students completing a four-year undergraduate degree from a university with appropriate accreditation in this area, two additional graduate-level courses will be required and must include an advanced seminar in emotional disturbance and emotional disturbance practicum.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-10-04. Types of credentials.**

1. The professional credential is:
  - a. Issued and is valid for the same period as the teaching license; and
  - b. Issued on the standards identified in section 67-11-10-03.
2. Tutor in training.
  - a. A letter of approval is issued and is valid for one school year. The letter of approval may be renewed for up to three consecutive years.
  - b. Approval is based on documentation of two school years of general education teaching experiences, current teacher certification or licensure, a program of study based on the standards identified in section 67-11-10-03 outlined by a college or university with an accredited training program, and a copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.
  - c. Approval is based on the school district's description of the need for the position and the plan of supervision of the tutor in training by a qualified emotional disturbance teacher.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-10-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the emotional disturbance credential. Information including the date and the applicant's name, social security number, address, telephone number, teaching certificate number and expiration date, signature, and academic preparation is required in the application.
2. A photocopy of official transcripts must be provided.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-10-06. Renewal requirements.** To renew the emotional disturbance credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota teacher's license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew special education credentials that are renewed on a continuing basis.
2. In those instances in which a significant lapse of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-10-07. Notification of denial.** If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-10-03 which must be completed for reconsideration.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-10-08. Effective dates.** The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

1. Issuing new credentials:

- a. Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.
  - b. Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.
2. Renewing existing credentials. Effective on February 1, 2000, all credential renewals must be based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**CHAPTER 67-11-11  
GIFTED AND TALENTED TEACHER CREDENTIAL**

|             |                        |
|-------------|------------------------|
| Section     |                        |
| 67-11-11-01 | Credentials Required   |
| 67-11-11-02 | Issuing Agency         |
| 67-11-11-03 | Credential Standards   |
| 67-11-11-04 | Types of Credentials   |
| 67-11-11-05 | Application Process    |
| 67-11-11-06 | Renewal Requirements   |
| 67-11-11-07 | Notification of Denial |
| 67-11-11-08 | Effective Dates        |

**67-11-11-01. Credentials required.** A teacher of gifted and talented students must hold the North Dakota special education professional credential in gifted and talented.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-02. Issuing agency.** The North Dakota special education teaching credential in gifted and talented issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-03. Credential standards.** The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. An applicant must hold a valid North Dakota teaching license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01, 15-36-11, and 15-38-18 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. Areas of preparation of teachers of gifted and talented students include the coursework listed in this subsection. The coursework should be taken at graduate level from a college or university with accreditation in this area and

offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants should have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as teachers of gifted and talented students are required to meet the requirements for either a general elementary or secondary educator's professional license. The credential requires at least nine semester hours of graduate credit in these areas:

- a. Education of gifted students.
  - b. Gifted education curriculum.
  - c. Student teaching in gifted education.
3. One year of successful teaching experience is required in general education with verification from the employing school district.
  4. Continuing education toward a master's degree is recommended.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-04. Types of credentials.** The professional credential is:

1. Issued and is valid for the same period as the teaching license; and
2. Issued on the standards identified in section 67-11-11-03.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the gifted and talented credential. Information including the date and the applicant's name, social security number, address, telephone number, teaching certificate number and expiration date, signature, and academic preparation are required in the application.
2. A photocopy of official transcripts must be provided.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-59-05, 15.1-02-11  
**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-06. Renewal requirements.** To renew the gifted and talented credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota teacher's license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a significant lapse of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-59-05, 15.1-02-11  
**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-07. Notification of denial.** If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-11-03 which must be completed for reconsideration.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-59-05, 15.1-02-11  
**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**67-11-11-08. Effective dates.** The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

1. Issuing new credentials:
  - a. Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.
  - b. Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.

2. Renewing existing credentials. Effective on February 1, 2000, all credential renewals must be based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11

**CHAPTER 67-11-12  
PHYSICAL DISABILITIES TEACHER CREDENTIAL**

|             |                        |
|-------------|------------------------|
| Section     |                        |
| 67-11-12-01 | Credentials Required   |
| 67-11-12-02 | Issuing Agency         |
| 67-11-12-03 | Credential Standards   |
| 67-11-12-04 | Types of Credentials   |
| 67-11-12-05 | Application Process    |
| 67-11-12-06 | Renewal Requirements   |
| 67-11-12-07 | Notification of Denial |
| 67-11-12-08 | Effective Dates        |

**67-11-12-01. Credentials required.** A teacher of students with physical disabilities must hold the North Dakota special education professional credential in physical disabilities.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(14)

**67-11-12-02. Issuing agency.** The North Dakota special education teaching credential in physical disabilities issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-12-03. Credential standards.** The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. An applicant must hold a valid North Dakota teaching license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01, 15-36-11, and 15-38-18 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. Areas of preparation of teachers for students with physical disabilities include the coursework listed in this subsection. The coursework should be taken from a college or university with accreditation in this area and offering a major in

special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants should have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as physical disabilities teachers are required to meet the requirements for either a general elementary or secondary educator's professional license. The credential requires at least fifteen semester hours of credit in these areas:

- a. Exceptional children and youth.
  - b. Introduction to physical disabilities or orthopedics for teachers.
  - c. Methods and materials in teaching students with physical disabilities.
  - d. At least one full course in another area of exceptionality.
  - e. Student teaching in the area of physical disabilities.
3. Recommended coursework includes transition planning, consultation and collaboration, and social and psychological implications of physical disabilities.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-12-04. Types of credentials.** The professional credential is:

1. Issued and is valid for the same period as the teaching license; and
2. Issued on the standards identified in section 67-11-12-03.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-12-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the physical disabilities credential. Information including the date and the applicant's name, social security number, address, telephone number, teaching certificate number and expiration date, signature, and academic preparation are required in the application.
2. A photocopy of official transcripts must be provided.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-12-06. Renewal requirements.** To renew the physical disabilities credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota teacher's license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a significant lapse of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-12-07. Notification of denial.** If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-12-03 which must be completed for reconsideration.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-12-08. Effective dates.** The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

1. Issuing new credentials:
  - a. Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.
  - b. Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.
2. Renewing existing credentials. Effective on February 1, 2000, all credential renewals must be based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**CHAPTER 67-11-13**  
**SPECIFIC LEARNING DISABILITIES TEACHER CREDENTIAL**

|             |                        |
|-------------|------------------------|
| Section     |                        |
| 67-11-13-01 | Credentials Required   |
| 67-11-13-02 | Issuing Agency         |
| 67-11-13-03 | Credential Standards   |
| 67-11-13-04 | Types of Credentials   |
| 67-11-13-05 | Application Process    |
| 67-11-13-06 | Renewal Requirements   |
| 67-11-13-07 | Notification of Denial |
| 67-11-13-08 | Effective Dates        |

**67-11-13-01. Credentials required.** A teacher of students with specific learning disabilities must hold the North Dakota special education professional credential in specific learning disabilities.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(14)

**67-11-13-02. Issuing agency.** The North Dakota special education teaching credential in specific learning disabilities issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-13-03. Credential standards.** The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. An applicant must hold a valid North Dakota teaching license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01, 15-36-11, and 15-38-18 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. Areas of preparation of teachers in specific learning disabilities include the coursework listed in this subsection. The coursework should be taken primarily at the graduate level

from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants should have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as specific learning disabilities teachers are required to meet the requirements for either a general elementary or secondary educator's professional license. Specific learning disabilities teachers with a secondary teaching license must have an elementary mathematics methods and an elementary reading methods course. The credential requires at least twenty-four semester hours of graduate credit in these areas:

- a. Exceptional children and youth.
  - b. Characteristics of specific learning disabilities.
  - c. Assessment and interpretation of children and youth with disabilities. This should not be primarily the administration of tests but rather contain considerable experience in the use of information from tests as they relate to curriculum, adjustment, and behavior.
  - d. Methods and materials in specific learning disabilities. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification, and other applied learning theory.
  - e. Developmental psychology or language development and disorders.
  - f. Behavior management. The course typically includes a study of student reaction to frustration, response to failure, emotional problems, and ways of managing problems in the classroom.
  - g. Corrective reading. Undergraduate hours in corrective reading must include supervised practicum.
  - h. Practicum. It is typical that limited practicum experiences are included in many of the above courses. This final practicum in working with children with specific learning disabilities should be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement.
3. For students completing a four-year undergraduate degree from a university with appropriate accreditation in this area, two additional graduate-level courses will be required and must

include an advanced seminar in specific learning disabilities and specific learning disabilities practicum.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-13-04. Types of credentials.**

1. The professional credential is:
  - a. Issued and is valid for the same period as the teaching license; and
  - b. Issued on the standards identified in section 67-11-13-03.
2. Tutor in training.
  - a. A letter of approval is issued and is valid for one school year including the following summer. The letter of approval may be renewed for up to three consecutive years.
  - b. Approval is based on documentation of two school years of general education teaching experiences, a current teaching license, a program of study based on the standards identified in section 67-11-13-04 outlined by a college or university with an accredited training program, and a copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.
  - c. Approval is based on the school district's description of the need for the position and the plan of supervision of the tutor in training by a qualified specific learning disabilities teacher.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-13-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the specific learning disabilities credential. Information including the date and the applicant's name, social security number, address, telephone number, teaching certificate number and expiration date, signature, and academic preparation are required in the application.

2. A photocopy of official transcripts must be provided.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-13-06. Renewal requirements.** To renew the specific learning disabilities credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota teacher's license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a significant lapse of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-13-07. Notification of denial.** If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-13-03 which must be completed for reconsideration.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-13-08. Effective dates.** The issuance of credentials through September 30, 1999, and from October 1, 1999, is as follows:

1. Issuing new credentials:
  - a. Through September 30, 1999, credentials may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.

- b. Effective on February 1, 2000, all credentials will be issued based on the standards and procedures provided in this chapter.
2. Renewing existing credentials. Effective on February 1, 2000, all credential renewals must be based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**CHAPTER 67-11-14  
PARAEDUCATOR CERTIFICATE OF COMPLETION**

|             |                                     |
|-------------|-------------------------------------|
| Section     |                                     |
| 67-11-14-01 | Certificate of Completion Required  |
| 67-11-14-02 | Issuing Agency                      |
| 67-11-14-03 | Certificate of Completion Standards |
| 67-11-14-04 | Verification Process                |
| 67-11-14-05 | Effective Dates                     |

**67-11-14-01. Certificate of completion required.** The paraeducator for students with disabilities must hold the North Dakota certificate of completion.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(14)

**67-11-14-02. Issuing agency.** The North Dakota paraeducator certificate of completion issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-14-03. Certificate of completion standards.** Twenty hours of in-service training for the paraeducator must be conducted within one calendar year of employment in which the paraeducator assumes assigned duties. Areas of preparation include:

1. Student support concepts.
2. Human growth and development and the impact of disabilities.
3. Utilizing effective instructional strategies to serve students with disabilities in integrated settings.
4. Strengthening behavior.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-14-04. Verification process.**

1. The local special education unit must have an approved comprehensive system of personnel development plan on file with the superintendent of public instruction detailing how requirements will be met. In order for the comprehensive system of personnel development plan to be approved, it must include:
  - a. The nature and content of the training.
  - b. The number of contact hours.
  - c. A description of local recordkeeping procedures used for verification of training.
2. Indication of completion of twenty hours of training by the paraeducator must be documented by a letter of verification signed by the person providing the training. The letter of verification must be on file in the special education administrative office for monitoring purposes.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-14-05. Effective dates.** Effective on February 1, 2000, all certificates will be issued based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**CHAPTER 67-11-15**  
**SCHOOL PSYCHOLOGY INTERN APPROVAL**

|             |                              |
|-------------|------------------------------|
| Section     |                              |
| 67-11-15-01 | Licensure Required           |
| 67-11-15-02 | Issuing Agency               |
| 67-11-15-03 | Letter of Approval Standards |
| 67-11-15-04 | Application Process          |
| 67-11-15-05 | Renewal Requirements         |
| 67-11-15-06 | Effective Dates              |

**67-11-15-01. Licensure required.** The school psychologist must hold a restricted North Dakota teaching license issued by the education standards and practices board with a master's degree in school psychology.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(14)

**67-11-15-02. Issuing agency.** The North Dakota special education licensure in school psychology is issued by the education standards and practices board. A temporary letter of approval, based on the applicant having met certain requirements, may be issued by the:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-15-03. Letter of approval standards.** The documentation of each standard must be verified by the department before any letter of approval is issued.

1. A school psychology intern who does not meet North Dakota requirements for a school psychology license may be granted an approval for the current school year, including the following summer, by meeting the conditions described in this section.
2. Approval will be granted for the current school year, including the following summer, only to personnel who have completed all coursework except for an internship or thesis, or both, or the equivalent. The special education unit that will provide the work setting must submit the following:

- a. A recommendation of the advisor at an accredited school psychology training institution stating that the candidate is eligible for enrollment in the internship program;
  - b. An outline of remaining coursework with specified dates for completion, including completion of a thesis or equivalent if required for the advanced degree;
  - c. A transcript for the candidate, showing completion of all coursework;
  - d. The plan describing how the candidate will be supervised and verifying that the supervision is by a licensed psychologist who has a minimum of two years' school psychology experience or equivalent; and
  - e. A statement regarding the employer-employee status between the special education unit and the candidate. The requirement of the candidate's graduate training program must be consulted to determine whether persons receiving academic credit for their service may be paid by the school or agency for those services.
3. Psychology personnel who have been employed in an agency other than public schools must secure licensure or certification through the North Dakota board of psychological examiners.
  4. Psychology personnel who have met the school psychology licensure requirements in another state and who wish to work as a school psychologist in North Dakota must secure licensure from the education standards and practices board.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-15-04. Application process.** A school psychology intern application form provided by the department must be submitted for the letter of approval. Information must include the date and the applicant's name, social security number, address, telephone number, teaching certificate number and expiration date if available, recommendation of advisor, outline of remaining coursework, current transcript, plan of supervision, statement regarding the employer-employee status between the special education unit and the candidate, and signature.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-15-05. Renewal requirements.** To renew the school psychology intern letter of approval, the school psychologist intern shall complete the requirements established by the North Dakota department of public instruction as stated in the remaining course of study and satisfactorily meet the supervision plan.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**67-11-15-06. Effective dates.** The issuance of school psychology letter of approval through September 30, 1999, and from October 1, 1999, is as follows for issuing new letters of approval:

1. Through September 30, 1999, letters of approval may be issued based on both the previous standards identified in the guide I laws, policies and regulations for special education for exceptional children (1993) published by the department of public instruction or the new standards and procedures provided in this chapter.
2. Effective on February 1, 2000, all letters of approval will be issued based on the standards and procedures provided in this chapter.

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

**General Authority:** NDCC 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-59-05, 15.1-02-11; 20 USC 1412(a)(15)

**STAFF COMMENT:** Article 67-15 contains all new material and is not underscored so as to improve readability.

**ARTICLE 67-15**

**MODIFIED PUBLIC SCHOOL CALENDAR**

Chapter  
67-15-01 Modified Public School Calendar

**CHAPTER 67-15-01**  
**MODIFIED PUBLIC SCHOOL CALENDAR**

|             |                          |
|-------------|--------------------------|
| Section     |                          |
| 67-15-01-01 | Modified Calendar        |
| 67-15-01-02 | Purpose                  |
| 67-15-01-03 | Approval                 |
| 67-15-01-04 | Application Process      |
| 67-15-01-05 | Application Requirements |
| 67-15-01-06 | Application Timelines    |
| 67-15-01-07 | Program Evaluation       |
| 67-15-01-08 | Length of Pilot Program  |
| 67-15-01-09 | Permanent Program        |
| 67-15-01-10 | Reconsideration          |

**67-15-01-01. Modified calendar.** All public schools in North Dakota are eligible to adopt a pilot modified school calendar that meets the minimum requirements for school operations and instructional time provided in North Dakota Century Code sections 15-41-06, 15.1-06-03, and 15.1-06-04 if approved by the department of public instruction under this chapter.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-02. Purpose.** Pilot programs under this chapter must achieve the goal of increased use of school facilities and provide education opportunities equivalent to those offered in one hundred eighty-day programs.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-03. Approval.** The modified public school calendar pilot program application must be approved by:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-04. Application process.**

1. An application under this chapter provided by the department of public instruction must be submitted including the school name, signature of administrator and board chairman, and information listed in section 67-15-01-05;
2. The application must be initiated by action of the school board; and
3. The application must be forwarded to:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-05. Application requirements.** The applicant must provide the following information:

1. Pilot program goals and objectives;
2. Purposes for initiation of the pilot program;
3. Documentation of community input;
4. Cost-benefit study, including energy and transportation savings;
5. School calendar assuring the required number of hours of instruction and the minimum days of school;
6. Plans for makeup days or time for storms and other closings;
7. Class schedule for all grade levels;

8. Professional development plan for implementation of the pilot program; and
9. Plans for the evaluation of the program, including student performance results; parent, student, and school personnel survey data; and cost comparisons of energy, transportation, personnel, and resources.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-06. Application timelines.**

1. Completed applications must be received by the department of public instruction by March first of the school year for the program to take effect the following school year.
2. The superintendent of public instruction will notify the school district of approval or disapproval of the application by April fifteenth after the application is received.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-07. Program evaluation.** A written evaluation report must be submitted to the department of public instruction by March first of the final year of the pilot program.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-08. Length of pilot program.** The duration of the pilot program may be for one, two, or three years as requested by the school board and approved by the superintendent of public instruction. The superintendent of public instruction may require an annual reapplication for the program and shall notify the school district of such requirement no later than February first of each year of the pilot program.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-09. Permanent program.** After three years of operation as a pilot program, a request for the permanent establishment of the program must be submitted to the department of public instruction by March first. The request must include:

1. Documentation that student performance has been maintained or improved;
2. Cost comparisons that indicate actual savings in plant, transportation, and personnel; and
3. Documentation of student, parent, and community involvement.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-01-10. Reconsideration.** If the modified school calendar program is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If the modified school calendar program under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

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

**General Authority:** NDCC 15.1-02-04, 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**STAFF COMMENT:** Article 67-18 contains all new material and is not underscored so as to improve readability.

**ARTICLE 67-18**

**DISPLACED HOMEMAKER PROGRAM**

Chapter  
67-18-01 Displaced Homemaker Program

**CHAPTER 67-18-01  
DISPLACED HOMEMAKER PROGRAM**

| Section     | Purpose               |
|-------------|-----------------------|
| 67-18-01-01 | Purpose               |
| 67-18-01-02 | Local Applications    |
| 67-18-01-03 | Review of Application |
| 67-18-01-04 | Funding               |
| 67-18-01-05 | Reporting             |

**67-18-01-01. Purpose.** The displaced homemaker program is designed to provide services for displaced homemakers as defined in North Dakota Century Code sections 14-06.1-02 through 14-06.1-15. The services include personal and employment counseling, interpersonal skill building, job readiness, job search and employability training, information, and community referral services.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 14-06.1-10  
**Law Implemented:** NDCC 14-06.1

**67-18-01-02. Local applications.** For grants and contract purposes, the superintendent of public instruction will issue applications and guidelines for those who wish to implement the displaced homemaker program.

Nonprofit agencies or organizations may apply for funds. The applications must be prepared according to the guidelines issued by the superintendent of public instruction.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 14-06.1-10  
**Law Implemented:** NDCC 14-06.1

**67-18-01-03. Review of application.** A review committee of not less than three individuals must be selected by the department of public

instruction. The committee may be selected from within the department or outside personnel. The review committee shall use the application review criteria developed by the department of public instruction. The review criteria is attached as an appendix to this chapter and must be part of the guidelines issued by the superintendent of public instruction. Upon completion of its review, the recommendations of the committee must be forwarded to the superintendent, who will announce the approved applications and grants through direct communication with the applicants and newspapers.

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

**General Authority:** NDCC 14-06.1-10

**Law Implemented:** NDCC 14-06.1

**67-18-01-04. Funding.** Grants and contracts may be made for single or multiple years. The funding cycle begins July first and ends June thirtieth. The amount of funding will be based upon review of the application and the applicant's ability to meet the specific needs of displaced homemakers and availability of funds.

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

**General Authority:** NDCC 14-06.1-10

**Law Implemented:** NDCC 14-06.1

**67-18-01-05. Reporting.** Each grantee shall submit student data and other state reports to the department of public instruction.

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

**General Authority:** NDCC 14-06.1-10

**Law Implemented:** NDCC 14-06.1

## Application Review Criteria

The displaced homemaker grant application will be evaluated based upon the following criteria:

- |  | Points |
|--|--------|
| 1. <b>Applicant's background and capacity to provide services.</b> Describe in detail the nature and purpose of your organization. Also outline how your organization is equipped to provide displaced homemaker services. | 10     |
| 2. <b>State of need.</b> Outline the geographic area you plan to serve and the needs of displaced homemakers in your area of service. Describe how you assessed those needs.   | 15     |
| 3. <b>Project objectives.</b> Outline in detail the project objectives for the program year. The objectives must be in measurable form.  | 20     |
| 4. <b>Project activities.</b> Describe in detail activities you will undertake. These activities must meet the objectives outlined above.  | 25     |
| 5. <b>Project evaluation.</b> Outline what methods will be employed to evaluate your program. Also describe how the results of such evaluation will be used.   | 20     |
| 6. <b>Budget.</b> Describe in detail the budget for this project.  | 10     |

**STAFF COMMENT:** Chapters 67-21-02, 67-21-03, 67-21-04, 67-21-05, 67-21-06, 67-21-07, and 67-21-08 contain all new material and are not underscored so as to improve readability.

**CHAPTER 67-21-02  
SCHOOL BREAKFAST PROGRAM**

|             |                                   |
|-------------|-----------------------------------|
| Section     |                                   |
| 67-21-02-01 | Purpose                           |
| 67-21-02-02 | State Agency                      |
| 67-21-02-03 | Use of Federal Rules and Policies |
| 67-21-02-04 | Eligibility                       |
| 67-21-02-05 | Application                       |
| 67-21-02-06 | Monitoring                        |
| 67-21-02-07 | Reimbursement Claims              |
| 67-21-02-08 | Meal Costs                        |
| 67-21-02-09 | Menus                             |
| 67-21-02-10 | Procurement Standards             |

**67-21-02-01. Purpose.** The school breakfast program, initiated at the federal level and in partnership with the states, authorizes payments to the states to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54

**67-21-02-02. State agency.** The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 220.3

**67-21-02-03. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the school breakfast program is governed by federal school breakfast program regulations. The local program must conform to lawfully issued rules and policies relating to the school breakfast program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 220

**67-21-02-04. Eligibility.** Local agencies eligible for participation in school breakfast programs include:

1. Educational units of high school grade or under, recognized as part of the educational system in the state;
2. Public or nonprofit private classes of preprimary grade conducted in educational units as a part of the educational system in the state;
3. Public or nonprofit private residential institutions that operate principally for the care of children; and
4. Private institutions licensed by the department of human services to provide residential child care services.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 220.2(u)

**67-21-02-05. Application.** Application forms are available at the Department of Public Instruction, 600 East Boulevard Avenue, Department 201, Bismarck, North Dakota 58505-0440.

1. The application forms include:
  - a. A program agreement, which includes:
    - (1) Identification of the program or programs in which the local agency wants to participate;
    - (2) Verification that the local agency will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all provisions required by the implementing regulations of the United States department of agriculture. Signature by an authorized representative of the local agency will serve as verification; and
    - (3) Verification of agreement that the local agency agrees to compile data, maintain records, and submit reports as required and permit authorized personnel to review such records, books, and accounts as needed to ascertain compliance with the program. Signature by an authorized representative of the local agency will serve as verification. Such records must be maintained for three years after the end of the fiscal year to which they pertain.

- b. A renewal agreement, which is presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in July and must be returned for approval and renewal by September.
  - c. A free or reduced-price policy statement and attachments, which will be automatically renewed unless a new or updated statement is entered into by the state and local agencies.
2. The program agreement, in its entirety, must stipulate that local agencies:
- a. Maintain a nonprofit school food service program;
  - b. Limit its net cash resources to an amount that does not exceed three months' average expenditures;
  - c. Maintain a financial management system and comply with related requirements;
  - d. Serve meals that meet the minimum requirements;
  - e. Price meals as a unit;
  - f. Serve meals free or at a reduced price to all children who are determined by the local agency to be eligible for such meals;
  - g. Count meals served and claim reimbursement for reimbursable free, reduced-price, and paid meals;
  - h. Maintain proper sanitation and health standards in conformance with applicable state and local laws and regulations;
  - i. Accept and use donated foods offered by the United States department of agriculture, if desired;
  - j. Maintain necessary facilities for storing, preparing, and serving food;
  - k. Upon request, make all accounts and records pertaining to the program available to the state agency and to the United States department of agriculture; and

1. Maintain files of currently approved and denied free and reduced-price applications or alternative documents and retain them for three years after the end of the fiscal year to which they pertain.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 220.7

**67-21-02-06. Monitoring.** The department of public instruction shall conduct onsite reviews of local agency program operations once every four years for the purpose of providing guidance and technical assistance to local agency food service programs. All such reviews must include the assessment of claims by the state agency for any overpayment and appropriate corrective action.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 220.15

**67-21-02-07. Reimbursement claims.** Local agencies shall submit claims for reimbursement using the basic claim for reimbursement form provided by the department of public instruction. Such claims are due on the tenth day of the month following the month of the claim. Federal and state reimbursement levels are determined on a periodic basis according to 7 CFR 220.9.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 210.11

**67-21-02-08. Meal costs.** The local agency has complete discretion in establishing student meal prices. However, if student payments are required, they may not exceed thirty cents for a reduced-price breakfast. Qualifying students must receive breakfast free or at a reduced price. Local agencies must agree to establish and use fair hearing procedures as stipulated in the free and reduced-price policy for households contesting the agency's decision regarding an eligibility determination on an application for reduced-price or free meals.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 210.19

**67-21-02-09. Menus.** All breakfasts served under the program must meet program requirements as stipulated in 7 CFR 220.8 and must comply with dietary guidelines for Americans.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 220.8

**67-21-02-10. Procurement standards.** Local agencies must comply with the requirements of the office of management and budget circular 102 and the department's uniform federal assistance regulation, 7 CFR 3015 subpart S, concerning the procurement of supplies, food, equipment, and other services with program funds.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 220.16

**CHAPTER 67-21-03  
SPECIAL MILK PROGRAM**

|             |                                   |
|-------------|-----------------------------------|
| Section     |                                   |
| 67-21-03-01 | Purpose                           |
| 67-21-03-02 | State Agency                      |
| 67-21-03-03 | Use of Federal Rules and Policies |
| 67-21-03-04 | Eligibility                       |
| 67-21-03-05 | Application                       |
| 67-21-03-06 | Monitoring                        |
| 67-21-03-07 | Reimbursement Claims              |

**67-21-03-01. Purpose.** The special milk program, initiated at the federal level and in partnership with the states, is designed to encourage the consumption of fluid milk by children.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54

**67-21-03-02. State agency.** The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 215.3

**67-21-03-03. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the special milk program is governed by federal special milk program regulations. The local program must conform to lawfully issued rules and policies relating to the special milk program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 15-54-05, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 215

**67-21-03-04. Eligibility.** Local agencies eligible for participation in the special milk program include:

1. Nonprofit schools of high school grade and under which do not participate in a meal service program authorized under the National School Lunch Act.
2. Split-session kindergarten programs in which the participating children do not have access to other meals.

3. Nonprofit nursery schools, child care centers, settlement houses, summer camps, and other nonprofit institutions devoted to the care and training of children.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 215.1

**67-21-03-05. Application.** Application forms are available at the Department of Public Instruction, 600 East Boulevard Avenue, Department 201, Bismarck, North Dakota 58505-0440.

1. The application forms include:
  - a. A program agreement, which includes:
    - (1) Identification of the program or programs in which the local agency wants to participate;
    - (2) Verification that the local agency will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all provisions required by the implementing regulations of the United States department of agriculture. Signature by an authorized representative of the local agency will serve as verification; and
    - (3) Verification of agreement that the local agency agrees to compile data, maintain records, and submit reports as required and permit authorized personnel to review such records, books, and accounts as needed to ascertain compliance with the program. Signature by an authorized representative of the local agency will serve as verification. Such records must be maintained for three years after the end of the fiscal year to which they pertain.
  - b. A renewal agreement, which is presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in July and must be returned for approval and renewal by September.
  - c. A free or reduced-price policy statement and attachments, which will be automatically renewed unless a new or updated statement is entered into by the state and local agency.
2. The program agreement, in its entirety, must stipulate that local agencies:

- a. Maintain a nonprofit school food service program;
- b. Limit its net cash resources to an amount that does not exceed three months' average expenditures;
- c. Maintain a financial management system and comply with related requirements;
- d. Serve milk that meets the minimum requirements;
- e. Serve milk free to all children who are determined by the local agency to be eligible for such meals;
- f. Count milk served and claim reimbursement;
- g. Maintain proper sanitation and health standards in conformance with applicable state and local laws and regulations;
- h. Maintain necessary facilities for storing, preparing, and serving milk;
- i. Upon request, make all accounts and records pertaining to the program available to the state agency and to the United States department of agriculture; and
- j. Maintain files of currently approved and denied free and reduced-price applications or alternative documents and retain them for three years after the end of the fiscal year to which they pertain.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 210.9

**67-21-03-06. Monitoring.** The department of public instruction shall conduct onsite visits to participating local agencies to ensure compliance with program regulations and with the nondiscrimination regulations of the United States department of agriculture.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 215.11

**67-21-03-07. Reimbursement claims.** Local agencies shall submit claims for reimbursement using the basic claim for reimbursement form provided by the department of public instruction. Such claims are due on the tenth day of the month following the month of the claim. Federal reimbursement levels are determined on a periodic basis.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 215.10

**CHAPTER 67-21-04  
CHILD AND ADULT CARE FOOD PROGRAM**

| Section     |  |
|-------------|--|
| 67-21-04-01 | Purpose                                      |
| 67-21-04-02 | State Agency                                 |
| 67-21-04-03 | Use of Federal Funds                         |
| 67-21-04-04 | Eligibility                                  |
| 67-21-04-05 | Application                                  |
| 67-21-04-06 | Monitoring                                   |
| 67-21-04-07 | Reimbursement Claims                         |
| 67-21-04-08 | Meal Service                                 |
| 67-21-04-09 | Food Distribution                            |
| 67-21-04-10 | Health and Safety                            |
| 67-21-04-11 | Fiscal Management                            |
| 67-21-04-12 | Family Day Care Home Sponsoring Organization |

**67-21-04-01. Purpose.** The program, initiated at the federal level and in partnership with the states, provides assistance to the state through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions that provide care.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54

**67-21-04-02. State agency.** The department of public instruction has been designated as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03; 7 CFR 226.3

**67-21-04-03. Use of federal funds.** Unless otherwise specified in this chapter, eligibility to participate in the child and adult care food program is governed by federal child and adult care food program regulations. Local agencies must conform to lawfully issued regulations and policies relating to the program.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226

**67-21-04-04. Eligibility.** Local agencies eligible to participate in the program include:

1. An adult day care center, licensed or approved, independent or under the auspices of a sponsoring organization.
2. Public or private nonprofit child care centers, or any proprietary title XX centers.
3. A child care facility that is a licensed or approved child care center, outside-school-hours care center, or day care home under the auspices of a sponsoring organization.
4. A sponsoring organization that is a public or nonprofit private organization responsible for the administration of the food program in:
  - a. One or more day care homes;
  - b. A child care center, outside-school-hours care center, or adult day care center;
  - c. Two or more child care centers, outside-school-hours care centers, or adult day care centers; or
  - d. Any combination of child care centers, adult day care centers, day care homes, or outside-school-hours care centers.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226.2

**67-21-04-05. Application.** Application forms are available at the Department of Public Instruction, 600 East Boulevard Avenue, Department 201, Bismarck, North Dakota 58505-0440. The application forms include:

1. A program agreement, which includes:
  - a. A provision that the institution shall accept final financial and administrative responsibility for management of an effective food service and comply with all program requirements;
  - b. Verification that the local agency will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and all provisions required by the implementing regulations of the United States department of agriculture. Signature by an authorized representative of the local agency will serve as verification;
  - c. Verification of agreement that the local agency agrees to compile data, maintain records, and submit reports as required and permit authorized personnel to review such

records, books, and accounts as needed to ascertain compliance with the program. Signature by an authorized representative of the local agency will serve as verification. Such records must be maintained for three years; and

- d. A requirement that each sponsoring organization shall submit a management plan and administrative budget with its application for review and approval. The state agency will review and approve all individual budget line items, including administrative labor and benefits.
2. A renewal agreement, which must be presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in August and must be returned for approval and renewal by September.
3. A free or reduced-price policy statement and attachments, which must be automatically renewed unless a new or updated statement is entered into by the state and local agency.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226.6

**67-21-04-06. Monitoring.** The department of public instruction shall conduct onsite reviews of local agency program operations, as specified in the federal regulations, for the purpose of providing guidance and technical assistance to local agencies. All reviews must include the assessment of overclaims and appropriate corrective action.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 226.6

**67-21-04-07. Reimbursement claims.** Local agencies shall submit claims for reimbursement using the child and adult care food program reimbursement claim form provided by the department of public instruction. Such claims are due on the tenth day of the month following the month of the claim. Federal reimbursement levels are determined on an annual basis according to federal law.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226.7

**67-21-04-08. Meal service.** All meals served under the program must meet the guidelines as stipulated in the federal regulations.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226.20

**67-21-04-09. Food distribution.** Certain local participating agencies, as prescribed in the federal regulations, must make an annual selection of accepting donated commodities or cash in lieu of commodities. The amount of commodities for both categories to which local agencies are entitled is determined by law and the availability of commodities.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226.5

**67-21-04-10. Health and safety.** The lead worker, as identified by the authorized representative, must complete a ten-hour initial course and subsequent update sessions once every three years. Certain agencies, because of the nature of meal service provided or the educational and training background of the lead worker, may be exempt from this requirement. In such cases, a waiver must be submitted by the local agency and approved by the department.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03

**67-21-04-11. Fiscal management.** Agencies must maintain a financial management system to account for revenues and expenditures of the food service program and to justify claims for reimbursement. The department requires authorized representatives of participating child care facilities to annually file a nonprofit status report to document that the center is maintaining a nonprofit financial status. Nonprofit status is further defined as an ending balance that does not exceed the value of three months of operating expenses.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 226.8, 7 CFR 226.15, 7 CFR 226.16

**67-21-04-12. Family day care home sponsoring organization.** The department of public instruction has established special provisions that apply to the family day care home sponsoring organizations.

1. Two of the three periodic monitoring visits made to day care home providers must be made without announcement.
2. Day care home providers may only switch sponsoring organizations at the beginning of a new federal fiscal year.

3. The administrative staff members of family day care home sponsorships may not directly solicit providers known to be currently operating under another sponsorship.
4. The department shall provide oversight in the budgetary planning of sponsoring organizations as stipulated in 7 CFR 226.16. Fiscal year salary adjustments or increases of sponsoring organization administrative staff members must be in line with the corresponding salary increases allowed employees of the state of North Dakota for the same time period.
5. Day care home providers may claim reimbursement for meals fed to their children only when other child care children are present and eating at the same meal service time.
6. Individuals who are employed by a family day care home sponsoring organization may not simultaneously participate under the same sponsorship as a provider.
7. An eligible family day care home must be a building that is currently a residence or a building that was originally built as a residence. The facility must be currently inhabitable as determined by the family day care home sponsoring organization and the provider must certify that the provider resides in the facility.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 226

**CHAPTER 67-21-05  
SUMMER FOOD SERVICE PROGRAM**

|             |                      |
|-------------|----------------------|
| Section     |                      |
| 67-21-05-01 | Purpose              |
| 67-21-05-02 | State Agency         |
| 67-21-05-03 | Use of Federal Funds |
| 67-21-05-04 | Eligibility          |
| 67-21-05-05 | Application          |
| 67-21-05-06 | Monitoring           |
| 67-21-05-07 | Program Payments     |
| 67-21-05-08 | Meal Service         |
| 67-21-05-09 | Fiscal Management    |

**67-21-05-01. Purpose.** The program, initiated at the federal level and in partnership with the states, provides assistance to the state through grants-in-aid and other means to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54

**67-21-05-02. State agency.** The department of public instruction has been designated as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 225.3

**67-21-05-03. Use of federal funds.** Unless otherwise specified in this chapter, eligibility to participate in the summer food service program is governed by federal summer food service program regulations. Local agencies must conform to lawfully issued regulations and policies relating to the program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 225

**67-21-05-04. Eligibility.** Local agencies eligible to participate include public and private nonprofit agencies including schools, camps, and migrant programs. The department of public instruction will

determine the eligibility of applicant sponsors in accordance with criteria established in 7 CFR 225.13.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 225.6

**67-21-05-05. Application.** Application forms are available at the Department of Public Instruction, 600 East Boulevard Avenue, Department 201, Bismarck, North Dakota 58505-0440. The application forms include:

1. A site information sheet.
2. Documentation supporting the eligibility of the site as serving an area in which poor economic conditions exist, if not a camp or a homeless feeding site.
3. For camps, documentation showing the number of children enrolled who meet the program's income standards.
4. With site information for a homeless feeding site, information to demonstrate that the site is not a residential child care institution.
5. For national youth sports program sites, a certification that all children are enrolled in the national youth sports program.
6. Information to enable the department of public instruction to determine whether the applicant meets the criteria for participation in the program as set forth in 7 CFR 225.14, the extent of program payments needed including a request for advance and startup payments, and, if applicable, a staffing and monitoring plan.
7. A complete administrative and operating budget for approval by the department of public instruction.
8. A plan for and a synopsis of its invitation to bid for food service, if required.
9. A free meal policy statement as defined in 7 CFR 225.6.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 225.6

**67-21-05-06. Monitoring.** The department of public instruction shall conduct onsite reviews of local agency program operations, as specified in the federal regulations, for the purpose of providing

guidance and technical assistance to local agencies. All reviews must include the assessment of overclaims and appropriate corrective action.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 225.7

**67-21-05-07. Program payments.** Program payments must be made to approved and operating local agencies upon the submission of the appropriate reports and claim forms. Claim forms are due on the tenth day of the month following the month of the claim. Federal reimbursement levels are determined on an annual basis according to federal law.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 225.9

**67-21-05-08. Meal service.** All meals served under the program must meet the guidelines as stipulated in the federal regulations.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 225.16

**67-21-05-09. Fiscal management.** Local agencies must maintain accurate records that justify all costs and meals claimed.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 253.15

**CHAPTER 67-21-06  
FOOD DISTRIBUTION PROGRAM**

|             |  |
|-------------|--|
| Section     |  |
| 67-21-06-01 | Purpose  |
| 67-21-06-02 | State Agency   |
| 67-21-06-03 | Use of Federal Rules and Policies                                |
| 67-21-06-04 | Eligibility  |
| 67-21-06-05 | Agreements   |
| 67-21-06-06 | Distribution and Control of Donated Foods                        |
| 67-21-06-07 | Storage of Commodity Foods - Standards for<br>Storage Facilities |
| 67-21-06-08 | Financial Management   |
| 67-21-06-09 | Maintenance of Records   |
| 67-21-06-10 | Monitoring   |
| 67-21-06-11 | Buy American   |
| 67-21-06-12 | Civil Rights   |

**67-21-06-01. Purpose.** The food distribution program, initiated at the federal level and in partnership with the states, is designed to make commodity foods available to participating states and local agencies to safeguard the health and well-being of the nation's people with better diets and to encourage the domestic consumption of nutritious agricultural commodities and other foods produced by American farmers.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54

**67-21-06-02. State agency.** The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 250.10

**67-21-06-03. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the food distribution program is governed by federal food distribution rules.

The local program must conform to lawfully issued rules and policies relating to the food distribution program.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 250

**67-21-06-04. Eligibility.** Local agencies and programs eligible for participation in the food distribution program include:

1. Nonprofit summer camps for children.
2. Charitable institutions.
3. Nutrition programs for the elderly.
4. Disaster feeding organizations.
5. Food assistance in situations of distress.
6. School food authorities.
7. Nonresidential child and adult care institutions.
8. Soup kitchens and food banks.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 250.10

**67-21-06-05. Agreements.** A local agency shall enter into a written agreement with the department as outlined in 7 CFR 250. Signature by an authorized representative of the local agency or program will serve as verification. Such records must be maintained for three years after the end of the fiscal years to which they pertain.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 250.12

**67-21-06-06. Distribution and control of donated foods.** Donated foods shall be available for distribution and use in accordance with the provisions of 7 CFR 250. Donated foods may not be sold, exchanged, or otherwise disposed of without approval of the department. Any transfer of donated food must be documented. The quantity of donated foods to be made available is determined in accordance with pertinent legislation. Donated foods shall be requested and distributed only in quantities that can be consumed without waste. The department will consistently use the commodity value established by the United States department of agriculture in allocated commodity foods. The department will maintain

a monthly distribution schedule that provides equitable and reliable deliveries to recipient agencies. The department will distribute donated foods only to recipient agencies that are eligible.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 250.13

**67-21-06-07. Storage of commodity foods - Standards for storage facilities.** Recipient agencies shall provide facilities for the handling, storage, and distribution of donated foods which are sanitary; provide safeguards against theft, spoilage, and other loss; maintain foods at proper temperature; and stock and space foods in a manner so that the donated food is readily identified. Recipient agencies shall take a physical inventory of donated food annually. Excess inventory must be reported to the department.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 250.14

**67-21-06-08. Financial management.** Recipient agencies shall pay part of all of the direct costs for intrastate storage and distribution of donated food. The department shall advise agencies annually of the fees and processes for remitting payment for these services. Local agencies are responsible for payment of warehousing and transportation within thirty days of shipment. A notice of nonpayment must be sent to local agencies if payment is not received on time. If payment is not received within sixty days of shipment, future shipments may be canceled. Recipient agencies are required to replace or pay for loss or damaged food as stipulated in 7 CFR 250.15(c).

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-04, 15-54-05; 7 CFR 250.15

**67-21-06-09. Maintenance of records.** Recipient agencies shall maintain accurate and complete records regarding the receipt, distribution, use, and inventory of donated food including end products processed from donated food. All records required under 7 CFR 250.16 must be retained for three years from the close of the fiscal year to which they pertain, unless there are claims or audit findings that have not been resolved.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 250.16

**67-21-06-10. Monitoring.** The state agency shall conduct onsite reviews of local agency program operations once every four years for the purpose of providing guidance and technical assistance to local agencies.

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

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-05; 7 CFR 250.19

**67-21-06-11. Buy American.** Recipient agencies, whenever possible, shall purchase only food products that are produced in the United States when using federal funds.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 250.23

**67-21-06-12. Civil rights.** Local agencies shall comply with the United States department of agriculture nondiscrimination regulations as referenced in 7 CFR parts 15, 15a, and 15b, and with civil rights instructions.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03; 7 CFR 250.21

**CHAPTER 67-21-07**  
**FOOD DISTRIBUTION ON INDIAN RESERVATIONS**

|             |  |
|-------------|--|
| Section     |  |
| 67-21-07-01 | Purpose                                      |
| 67-21-07-02 | State Agency                                 |
| 67-21-07-03 | Use of Federal Rules and Policies            |
| 67-21-07-04 | Commodity Control, Storage, and Distribution |
| 67-21-07-05 | Administrative Payments                      |

**67-21-07-01. Purpose.** The food distribution program on Indian reservations, initiated at the federal level and in partnership with the states, authorizes the receipt and distribution of commodity foods by state agencies to tribal organizations.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54

**67-21-07-02. State agency.** The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program for tribal organizations that wish to participate in this program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 253.3

**67-21-07-03. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the program is governed by federal rules. The tribal organization shall conform to lawfully issued rules and policies relating to the food distribution program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 253

**67-21-07-04. Commodity control, storage, and distribution.** Tribal organizations are eligible to receive commodities that are made available under the program. The commodities must be allocated to tribal organizations on the basis of the food issuance rates established in the federal rules. Delivery must be arranged upon the receipt of a valid order from the tribal organization. Shipments of commodities to tribal organizations must be made under the terms of the existing state transportation contract and in accordance with a schedule jointly determined by the department and the tribal organization. Tribal

organizations shall maintain control of and accountability for commodities, conduct inventories as necessary, provide and maintain adequate and appropriate storage facilities, and distribute the commodities to individuals on the basis of established eligibility. The department will take action to obtain restitution in connection with claims arising for improper distribution, use, loss, or damage of commodities.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 253.8

**67-21-07-05. Administrative payments.** The department shall reimburse tribal organizations for costs that are allowable under 7 CFR 253.9, in accordance with the approved tribal organization budget.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 253.9

**CHAPTER 67-21-08**  
**THE EMERGENCY FOOD ASSISTANCE PROGRAM**

|             |                                   |
|-------------|-----------------------------------|
| Section     |                                   |
| 67-21-08-01 | Purpose                           |
| 67-21-08-02 | State Agency                      |
| 67-21-08-03 | Use of Federal Rules and Policies |
| 67-21-08-04 | Availability of Commodities       |
| 67-21-08-05 | Eligibility                       |
| 67-21-08-06 | Distribution Plan                 |
| 67-21-08-07 | Administrative Payments           |

**67-21-08-01. Purpose.** The emergency food assistance program, initiated at the federal level and in partnership with the states, authorizes the receipt and distribution of commodity foods by state agencies to eligible local emergency feeding organizations.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54

**67-21-08-02. State agency.** The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03; 7 CFR 251.2

**67-21-08-03. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the emergency food assistance program is governed by federal rules. The local program shall conform to lawfully issued rules and policies relating to the food distribution program.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-54-03, 28-32-02  
**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 251

**67-21-08-04. Availability of commodities.** Emergency feeding organizations are eligible to receive commodities that are made available under sections 202 and 214 of the Emergency Food Assistance Act of 1983. The availability and control of donated commodities must be in accordance with section 251.4 of the Emergency Food Assistance Act of 1983.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 251.4

**67-21-08-05. Eligibility.** Local agencies and programs eligible for participation in the emergency food assistance program are public and nonprofit private organizations that have entered into an agreement with the department of public instruction to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons. Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 251.3

**67-21-08-06. Distribution plan.** The department of public instruction shall establish an annual commodity distribution plan order under which commodities are allocated to participating emergency feeding organizations on the basis of participation.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 251.6

**67-21-08-07. Administrative payments.** The department of public instruction shall provide administrative payments to emergency feeding organizations to support expenses associated with the storage and further distribution of commodities. Administrative funds are allocated to participating emergency feeding organizations on the basis of individual participation.

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

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-03, 15-54-05; 7 CFR 251.8

STAFF COMMENT: Articles 67-22, 67-23, 67-24, 67-25, 67-26, and 67-27 contain all new material and are not underscored so as to improve readability.

## ARTICLE 67-22

### CORRECTIVE ACTIONS AND SANCTIONS

Chapter  
67-22-01            Corrective Actions and Sanctions

### CHAPTER 67-22-01 CORRECTIVE ACTIONS AND SANCTIONS

Section  
67-22-01-01            Corrective Actions and Sanctions  
67-22-01-02            Preliminary Corrective Procedures  
67-22-01-03            Reconsideration of Corrective Actions and Sanctions

**67-22-01-01. Corrective actions and sanctions.** A school district or organization must comply with all education standards from state and federal law. If the school district or organization violates any of the areas and does not take the necessary corrective actions to remedy the violation, the department will impose sanctions. Examples of noncompliance for a school district and organization include:

1. Failure to meet school state approval standards as set out in North Dakota Century Code sections 15-41-24, 15-41-25, 15.1-06-04, and 15.1-06-09.
2. Failure to meet state school accreditation standards as set out in North Dakota Century Code section 15.1-02-11.
3. Nonpayment of tuition as set out in North Dakota Century Code sections 15-40.2-04 and 15-40.2-05 and subsection 5 of North Dakota Century Code section 15-40.2-08.
4. Failure to file reports as set out in subsections 4 and 5 of North Dakota Century Code section 15-40.1-06.
5. Failure to comply with federal and general program requirements, applicable grant award requirements whether by inference or reference to education, federal statutes in

relation to education, or regulations or assurances required for education.

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

**General Authority:** NDCC 15-34.1-03, 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-34.1-03, 15-59-05, 15.1-02-11; 20 USC 1400 et seq.

**67-22-01-02. Preliminary corrective procedures.** When a school district or organization violates one or more provisions applicable to education listed in section 67-22-01-01, the following procedures must be implemented:

1. The department shall notify the local board of education under North Dakota Century Code section 15-29-08, or other governing board, in writing of the violation, with a copy to the school district or organization administrator. The notification must include:
  - a. A description of the violation;
  - b. Corrective actions required by the school or organization to correct the violation; and
  - c. Timelines for completing the corrective actions;
2. If a plan for resolution is not agreed to within the time period specified in the notice or within thirty days of the notification date, the superintendent, the department director of fiscal management, and the department director of school finance and organization must be notified;
3. Department staff shall further communicate with the local board of education or other governing board and school district or organization administration via telephone, letter, or personal meeting to resolve the issues; and
4. If issues are still not resolved and the school district or organization does not complete the required corrective actions, appropriate sanctions must be imposed until the school district or organization completes the corrective actions.

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

**General Authority:** NDCC 15-34.1-03, 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-34.1-03, 15-59-05, 15.1-02-11; 20 USC 1400 et seq.

**67-22-01-03. Reconsideration of corrective actions and sanctions.** The school district or organization may request reconsideration of the

violation claim if reconsideration is allowed only by statute or rules. The reconsideration process includes the following steps:

1. The request for reconsideration must be made in writing to the superintendent within thirty days of the date of the department's notice of noncompliance.
2. Sanctions specified in the department's original notice must be effective as identified in the notice.
3. Upon receipt of the reconsideration, the superintendent shall consider the extent that the sanctions specified in the original notice to the school district and organization will be adjusted, if any.
4. Reconsideration of an accreditation issue must be made by May first and must be forwarded to the state accreditation committee.
5. The committee must forward its recommendation regarding reconsideration to the superintendent by June fifteenth.
6. Any final decision must be issued by the superintendent within fifteen days of the request for reconsideration.
7. If the final decision involves the issue of accreditation, the final decision must be issued by June thirtieth.

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

**General Authority:** NDCC 15-34.1-03, 15-59-05, 15.1-02-11

**Law Implemented:** NDCC 15-34.1-03, 15-59-05, 15.1-02-11; 20 USC 1400 et seq.

ARTICLE 67-23

SPECIAL EDUCATION

|          |  |
|----------|--|
| Chapter  |  |
| 67-23-01 | Comprehensive General Plan Requirements for Special Education Programs |
| 67-23-02 | State Funding for Special Education                                    |
| 67-23-03 | Federal Funding for Special Education                                  |
| 67-23-04 | Special Education Dispute Resolution Options and Appeals               |

CHAPTER 67-23-01  
COMPREHENSIVE GENERAL PLAN REQUIREMENTS FOR SPECIAL  
EDUCATION PROGRAMS

|             |   |
|-------------|---|
| Section     |   |
| 67-23-01-01 | Definitions   |
| 67-23-01-02 | School District's Comprehensive General Plan Requirements for Education of Students With Disabilities |

**67-23-01-01. Definitions.** As used in this article, the following definitions apply:

1. "Department" means the department of public instruction.
2. "Free appropriate public education" means special education and related services, described in an individualized education program plan, and provided to children in the least restrictive environment.
3. "IEP" means an individualized education program, identifying the educational service required by the student with disabilities and developed for each student with disabilities by a multidisciplinary team.
4. "Individuals With Disabilities Education Act" or "IDEA" means a federal special education law that requires school districts to provide a free appropriate public education to eligible children with disabilities (20 USC 1400-1420).
5. "Least restrictive environment" means that to the maximum extent appropriate students with disabilities are educated with nondisabled peers and that the setting where students with disabilities are educated is as close as possible to each student's home.

6. "Local education agency" means a school district or multidistrict special education program organized under the auspices of the superintendent which may apply for, receive, administer, and expend state and federal funds for special education.
7. "Multidisciplinary team" means a team of professionals and parents which develops an IEP for a student with disabilities.
8. "Multidistrict special education unit" means that more than one school district organizes for the purposes of planning and coordinating special education and related services.
9. "Nonsectarian" means not affiliated with or restricted to a particular religion.
10. "Organization" includes school districts, multidistrict local education agencies, child care centers, vocational education centers, private or public residential facilities, counties, and nonprofit agencies.
11. "Part B of IDEA" means the Individuals With Disabilities Education Act, Part B. IDEA is federal legislation enacted and amended as Public Law 91-230 and Public Law 105-17 (20 USC 1400-1420). Part B of IDEA is codified at 20 USC 1411-1420.
12. "Related services" means transportation and any developmental, corrective, or supportive services needed to help the student with disabilities benefit from special education.
13. "Resident district" means the school district of residence of the supporting parent.
14. "Special education unit" means single-district special education units or multidistrict special education units.
15. "State" means the state of North Dakota.
16. "Student with disabilities" or "child with disabilities" means a student or child who has reached the third birthday, has not yet reached age twenty-one as of midnight August thirty-first, and who because of mental, physical, emotional, or learning characteristics requires special education and related services designed to meet individual education needs. This definition includes children who are mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually impaired, emotionally disturbed, specific learning disabled, orthopedically impaired, other health impaired, autistic, or traumatic brain injured or who have multiple disabilities.
17. "Superintendent" means the superintendent of public instruction.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05; 20 USC 1400-1419

**67-23-01-02. School district's comprehensive general plan requirements for education of students with disabilities.** Each school district in the state shall have a comprehensive general plan for the education of students with disabilities between the ages of three and twenty-one who reside in that district. The plan must:

1. Be filed with the superintendent of public instruction; and
2. Describe the multidistrict special education unit organizational and services plan or the organization of services for a single-district special education unit, including:
  - a. Description of the organization, including participating school districts in multidistrict special education units;
  - b. Structure and organization of the board;
  - c. Powers and duties of the board;
  - d. Monetary policies including fiscal management and method of apportioning administrative and program costs;
  - e. Procedures for withdrawing from or joining a multidistrict unit, not including single district units;
  - f. Services description;
  - g. Unit or district policies and procedures for implementing the provisions of state law and the Individuals With Disabilities Education Act; and
  - h. Letters of agreement from participating school districts, not including single-district units.

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

**General Authority:** NDCC 15-59-04, 15-59-05, 15-59.2-01

**Law Implemented:** NDCC 15-59-05, 15-59.2-01, 15-59.2-02, 15-59.2-05;  
20 USC 1400-1419

**CHAPTER 67-23-02  
STATE FUNDING FOR SPECIAL EDUCATION**

| Section     | Definition  |
|-------------|---|
| 67-23-02-01 | Definition  |
| 67-23-02-02 | Costs for Educating Students With Disabilities  |
| 67-23-02-03 | Conditions for Contracted Services  |
| 67-23-02-04 | Costs Allowed Under School-Placed Contracts for Students With Disabilities Attending an In-State Private School or an Out-of-State Public or Private School |
| 67-23-02-05 | Paraeducators   |
| 67-23-02-06 | Special Education Boarding Care Placement and Reimbursement   |
| 67-23-02-07 | Costs Not Allowed Under School-Placed Contracts   |

**67-23-02-01. Definition.** As used in this chapter, "contract for services" means a contract between the resident district and another school district or an organization outside the local education agency for services to a student with disabilities.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05; 20 USC 1400-1419

**67-23-02-02. Costs for educating students with disabilities.** The resident district must pay the cost of special education and related services required by law for the student with disabilities.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1400-1419

**67-23-02-03. Conditions for contracted services.**

1. A resident district may enter into a contract for services for students with disabilities if all of the following requirements are met:
  - a. The IEP team has developed an IEP and determined that the least restrictive environment for the education of the student with disabilities is not available in the neighborhood school of the resident district.
  - b. Another setting is available for education in the least restrictive environment in another district or other setting in North Dakota or another state.

- c. The curriculum and educational services provided in the least restrictive setting are approved by the superintendent. The resident district must notify the superintendent in writing and submit the proper forms. The forms must be complete and include the proper signatures. Sections g and j of the student's current IEP must also be submitted to the department with the contract.
  - d. The school district is able to assure the superintendent that alternative public school placements in the state were investigated and that the alternate setting selected is accredited, nonprofit, and nonsectarian and has proper facilities and services for the education of the student. Assurance is made by completing the contract form with required signatures.
2. Each resident district of a student with disabilities must:
    - a. Participate in development of the IEP planning for the student;
    - b. Evaluate the alternate program as defined in subdivision b of subsection 1 annually and establish an appropriate program for the student with disabilities within the resident district system whenever feasible;
    - c. Maintain a case file, including a progress and periodic evaluations of the student with disabilities;
    - d. Provide transportation and boarding care for the student; and
    - e. Share educational records with other school districts or residential facilities that provide educational services for the student with disabilities.
  3. The school or facility providing the education to a student with disabilities must:
    - a. Provide the education program as prescribed in the IEP developed by the multidisciplinary team including representation from the resident district;
    - b. Report to parents at the same frequency as progress reports are provided for students who are not disabled attending the school during the school year;
    - c. Report progress and summary evaluations to the resident district two times during the school year; and

- d. Share educational records with school districts or other residential facilities that provide educational services for the student with disabilities.
4. A school district may not enter into a contract with any in-state public school, in-state or out-of-state private nonsectarian, nonprofit corporation, or out-of-state public school for the education of any student because of a disability, unless the services provided by the school and the contract have been approved in advance by the superintendent. In order for a resident district to recover appropriate funds, the proposed contract forms must be filed with the department twenty working days in advance of the effective date of a new or changed placement. Preapproval may be set aside based on a waiver from the department.
5. A waiver request form, with reason for the waiver and projected submission date, is available from the department.
6. The administrator of the resident district of the student with disabilities must complete a contract for services using forms provided by the department to the administrator of the school providing the education to the student with disabilities.
7. The administrator of the school providing the education shall return the completed contract to the office of special education at the department.
8. The superintendent must notify each of the parties involved of approval or disapproval.
9. The resident district of the student with disabilities must make all payments to the school providing the education-related, including special education-related, service payments and boarding care payments, according to the period of time indicated in the contract.
10. The school providing the education for the student with disabilities shall arrange participation of the resident district in the IEP or other planning meetings and must maintain contact regarding the student's progress with the resident district and with the parents of the student with disabilities during the year.
11. The school providing the education for the student with disabilities shall keep and provide the resident district of the student with disabilities with attendance records for the student. In the event that the student attends the school operated by the school providing the education for a period less than a school year, the resident district of the student with disabilities will be liable for costs only for the period of time that the student was in attendance to the end of the month in which attendance ceases.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-06, 15-59-07; 20 USC 1400-1419

**67-23-02-04. Costs allowed under school-placed contracts for students with disabilities attending an in-state private school or an out-of-state public or private school.**

1. Costs allowed under school-placed contracts for students with disabilities partially reimbursable from state special education funds include:
  - a. Boarding care costs, including:
    - (1) Room costs;
    - (2) Nursing service;
    - (3) Child care;
    - (4) Central services and supply;
    - (5) Dietary services;
    - (6) Plant operation;
    - (7) Building maintenance and grounds;
    - (8) Housekeeping;
    - (9) Laundry and linen;
    - (10) Depreciation; and
    - (11) Insurance.
  - b. Education, including:
    - (1) Salaries and employee benefits, which include teacher, principal, and superintendent;
    - (2) Supplies; and
    - (3) Local school board costs.
  - c. Related services, including:
    - (1) Speech therapy;
    - (2) Physical therapy; and
    - (3) Occupational therapy.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-06, 15-59-07; 20 USC 1400-1419

**67-23-02-05. Paraeducators.** The full cost of a one-on-one paraeducator or aide can be claimed as an allowable cost under a school-placed contract if the paraeducator is with the student with disabilities exclusively throughout a schoolday. If a paraeducator has other duties, then the percentage of time and cost on the contract needs to be adjusted accordingly. The requirements and standards for a paraeducator are specified in chapter 67-11-14.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-06, 15-59-07; 20 USC 1400-1419

**67-23-02-06. Special education boarding care placement and reimbursement.** Educational boarding care placement for a student with disabilities may be accomplished only through the recommendation of the IEP team and in the circumstance when a student cannot be transported daily to and from the home due to distance traveled. Boarding care placement must be in a state-registered home or institution. Boarding care for a child may occur in state but out of unit, within unit but out of district, or out of state. Reimbursement is requested by the resident district through the local education agency for eighty percent of the cost of boarding care for the student. The cost reimbursement may be applied for using a form available from the department.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-07.2, 15-59.3-03; 20 USC 1400-1419

**67-23-02-07. Costs not allowed under school-placed contracts.** Costs not allowed under school-placed contracts for students with disabilities are:

1. Medical services provided by a physician beyond diagnostic procedures;
2. Drugs and medication;
3. Incidental fees or personal equipment that are the responsibility of the parents of the students such as eyeglasses, a prosthesis, textbook deposits, or driver's education fees; and
4. Staff expenses including staff:
  - a. Travel;

- b. Education and training;
- c. Libraries; and
- d. Audiovisual supplies.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-02.1, 15-59-05, 15-59-06, 15-59-07; 20 USC  
1400-1419

**CHAPTER 67-23-03  
FEDERAL FUNDING FOR SPECIAL EDUCATION**

| Section     | Definition   |
|-------------|--|
| 67-23-03-01 | Definition   |
| 67-23-03-02 | Application for Federal Funds Under Part B of IDEA                           |
| 67-23-03-03 | Recovery of Funds for Misclassified Children Under Part B of IDEA            |
| 67-23-03-04 | Authorized Use of Part B of IDEA Funds                                       |
| 67-23-03-05 | Excess Cost Requirement Under Part B of IDEA                                 |
| 67-23-03-06 | Recordkeeping for Funds Under Part B of IDEA                                 |
| 67-23-03-07 | School District or Organization Opportunity for Hearing Under Part B of IDEA |

**67-23-03-01. Definition.** As used in this chapter, "excess costs" means those costs that are in excess of the average annual student expenditure in a local education agency during the preceding school year for an elementary or secondary school student.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1400-1419

**67-23-03-02. Application for federal funds under Part B of IDEA.** To apply for available federal funds, each district shall file forms provided by the department relative to the December child count requirement, the end of the year reports, and the application form prescribed by the department.

1. The December child count requirement means reporting students who have an IEP and are receiving special education and related services as of December first of the current year.
2. The end-of-the-year reports include collecting the following:
  - a. Data on each student who received special education and related services during the past year;
  - b. A report on special education and related services personnel needed and employed; and
  - c. A count of students with disabilities who were suspended or expelled, or both.
3. Applications for federal funds include collection of the following information:

- a. Maintenance of effort, meaning expenditures from state and local sources for special education, for the most current three years;
- b. Project participants;
- c. Project narratives;
- d. Budget summary;
- e. Assurances; and
- f. Required signatures.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

**67-23-03-03. Recovery of funds for misclassified children under Part B of IDEA.**

- 1. The department shall seek to recover any funds made available under Part B of IDEA as amended for services to any child who has been determined erroneously classified as eligible to be counted through the December first child count.
- 2. The department shall use the following procedures for implementing and monitoring child count:
  - a. The department shall review annually the federal Part B of IDEA regulations for conducting a statewide child count;
  - b. The department shall send letters annually explaining December first child count procedures as required by Part B of IDEA to all special education units;
  - c. Each local education agency shall respond to the request by submitting required data in an electronic format specified by the department;
  - d. Each individual responsible for collecting child count information shall verify to the best of the individual's knowledge that the child count is a true, accurate count by submitting a sworn affidavit;
  - e. Data must be edited through computer checks as well as visual scanning to identify errors. Each apparent error must be checked with the local education agency from which it was submitted and changes entered into a statewide child count data base;

- f. The department shall compile all child count information on a federally required reporting form;
  - g. Child count information must be submitted by special education units for analysis and comparison of data to other records collected by the department containing numbers of served students with disabilities; and
  - h. The department must monitor procedures to verify accuracy of special education unit child counts as follows:
    - (1) A sample of students from the current child count must be selected, with an attempt made to include all categories of disability;
    - (2) The files of the selected students must be reviewed on site for timeliness and completeness; and
    - (3) Evidence of student eligibility must be based on the following criteria:
      - (a) The IEP must have been in effect and the child with disabilities receiving special education and related services at the time of the child count;
      - (b) That the child with disabilities has been evaluated and determined to be a child with a disability eligible to receive special education and related services; and
      - (c) That the student was enrolled in school at the time of the child count.
- 3. The department shall request the special education units to return federal funds for all misclassified children who were included in the child count.
  - 4. Funds for misclassified students must be returned to the department within thirty days of the department's notification to the special education unit.
  - 5. The department shall request the return of federal per pupil allocations in a direct ratio to the percentage of error found during monitoring.
  - 6. The request for return of funds may not be made without first affording the special education unit a review after reasonable notice has been given and the unit has had an opportunity to present information and data relating to the error calculation.

- a. If the error is substantiated, the funds in question must be returned within thirty days of the request.
  - b. If the special education unit does not return the funds, the department shall suspend federal financial assistance immediately until the situation is corrected.
7. The department shall return all funds to the United States department of education office of special education programs for misclassified children who were included in the child count.
  8. Final disapproval action may not be taken by the department on any applications submitted by a special education unit without first affording the applicant reasonable notice and opportunity for a hearing.
  9. The following procedure, set forth under section 76.401 of the education department general administrative regulations as amended provides the procedures for an appeal:
    - a. The applicant must request the hearing of the department within thirty days of the action of the department;
    - b. Within thirty days after it receives a request, the department will request the assignment of an administrative law judge from the North Dakota office of administrative hearings, who shall hold a hearing on the record and shall review the department's action;
    - c. No later than ten days after the hearing by the administrative law judge, the administrative law judge shall issue a written ruling, including findings of fact and reasons for the ruling.
      - (1) If the administrative law judge determines that its action was contrary to state or federal statutes or regulations that govern the applicable program, the department shall rescind its action; or
      - (2) If the department does not rescind its final action after a review, the applicant may appeal to the secretary of the United States Department of Education, 400 Maryland Avenue Southwest, Washington, DC 20202-0002. The applicant must file a notice of the appeal with the secretary within twenty days after the applicant has been notified by the department of the results of the department's review. For purposes of appeal, the notice must state a description of the violation, the corrective action sought by the department, and the relief sought by the applicant. If supported by substantial evidence, findings of fact of the department are final; and

- d. The department shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

**67-23-03-04. Authorized use of Part B of IDEA funds.**

1. After the special education unit has documented through an amendment to its current approved plan and on its Part B of IDEA application for federal funds that it has met the excess costs and maintenance of effort requirements, the Part B funds may be used for whatever special services and activities are necessary to meet the requirements of Part B of the Individuals With Disabilities Education Act.
2. For purposes of this section, maintenance of effort means that funds provided to a local education agency under Part B of IDEA may not be used to reduce the level of expenditures for the education of children with disabilities made by the local education agency from local funds below the level of those expenditures for the preceding fiscal year.
3. Any other use of funds under Part B of IDEA unless expressly authorized by the department or the United States department of education is prohibited.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

**67-23-03-05. Excess cost requirement under Part B of IDEA.**

1. The excess cost requirement means that the local education agency must spend a certain minimum amount, as specified in Part B of IDEA and as calculated in section 67-23-03-06, for the education of its disabled children before IDEA Part B funds may be used.
2. After a local education agency has shown on an annual amendment to its current approved plan that, on the average, it has spent the minimum for the education of its children with disabilities, the local education agency has met the excess cost requirement and all additional costs are excess costs.

3. Part B of IDEA funds may then be used to pay for those additional costs.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

**67-23-03-06. Recordkeeping for funds under Part B of IDEA.** A local educational agency shall keep records to show that it has spent at least the minimum amount or average amount determined through the formula process on the education of its students with disabilities. The formula process to determine the minimum or average amount is as follows:

1. Add all local educational agency expenditures in the preceding year, except capital outlay and debt service;
2. Subtract federal, state, and local funds spent in the preceding year for three categories of children disabled, educationally deprived, and bilingual; and
3. Divide the result by the average daily membership of students enrolled in the local educational agency, computing elementary and secondary into different computations.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1400-1419

**67-23-03-07. School district or organization opportunity for hearing under Part B of IDEA.**

1. When a school district or organization has been notified that it is not compliant and is not eligible for funding under Part B of IDEA, the school district or organization may request an opportunity for a hearing.
2. The request must be in writing to the superintendent within thirty days of the date of the department's notice of noncompliance and must include a description of the violation, corrective action required by the department, and the relief sought by the applicant.
3. The withholding of funding under Part B of IDEA specified in the department's original notice must remain in effect as identified in the notice.
4. Upon receipt of the hearing request, the department will request the assignment of an administrative law judge from the

North Dakota office of administrative hearings. The administrative law judge may modify, suspend, or keep in effect the withholding of funding under Part B of IDEA specified in the original notice to the school district or organization until after the hearing and final decision.

5. Any final decision of the administrative law judge, which must contain findings of fact and reasons for the ruling, must be issued within thirty days of the request for a hearing, unless all parties are in agreement to a request for extension of the timeline.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59-05, 15-59-05.1, 15-59-05.2; 20 USC 1413(c)(d)

**CHAPTER 67-23-04  
SPECIAL EDUCATION DISPUTE RESOLUTION OPTIONS AND APPEALS**

|             |   |
|-------------|---|
| Section     |   |
| 67-23-04-01 | Formal Dispute Resolution Procedures Under Part B of IDEA |
| 67-23-04-02 | Mediation Under Part B of IDEA                            |
| 67-23-04-03 | Filing of a Complaint Under Part B of IDEA                |
| 67-23-04-04 | Investigation of Complaint Filed Under Part B of IDEA     |
| 67-23-04-05 | Due Process Hearing Under Part B of IDEA                  |
| 67-23-04-06 | Other Formal Dispute Resolution Procedures                |

**67-23-04-01. Formal dispute resolution procedures under Part B of IDEA.**

1. Part B of IDEA and its regulations require that each state adopt procedures for receiving and resolving disputes between school districts and families regarding special education services.
2. The department urges that reasonable attempts be made at the local level to resolve disagreements regarding the provision of special education services, including informal meetings with teachers, specially called team meetings, and formal dispute resolution by third parties.
3. Contact with the department is through one or more of the following channels, with a request resulting in:
  - a. Information or technical assistance, which is a response to a concern that may include negotiation, consultation, providing information, providing clarification, or making a referral.
  - b. Mediation, which is a process to assist parents and schools in resolving disagreements regarding students' special education services and may be requested at any time.
  - c. A complaint, which is a formal process resulting from an alleged violation of Part B of IDEA which includes an investigation by department staff and resulting in a determination of findings of facts, conclusions, and reasons for the final decision.
  - d. A due process hearing, which is an evidentiary hearing held before an administrative law judge who renders a final decision subject to civil action.

4. This section applies to disputes specifically between families of students with disabilities and schools.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1415

**67-23-04-02. Mediation under Part B of IDEA.**

1. Any parent of a child with a disability who is receiving special education services or who is suspected of needing special education services and who has concerns that are not resolved through speaking with the student's general or special education teacher, the building principal, the superintendent, or the district's special education director may request mediation to resolve those concerns. Mediation may be requested with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education to the child.
2. A school district or local education agency may also request mediation to help resolve a concern with the parent of a child with a disability.
3. Requests for mediation may be made to the local special education director who will then notify the department of that request or may be made directly to the department.
4. The mediation is both voluntary and confidential.
5. Both parents of the student with a disability and the school district must agree to mediation before any mediator is appointed.
6. A qualified mediator is required.
7. The department must bear the cost related to and make arrangements for special education mediation.
8. The use of mediation does not preclude the parents of a child with a disability or the school district from requesting a due process hearing.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1411(f)(3) & 1415(e)

**67-23-04-03. Filing of a complaint under Part B of IDEA.**

1. If a parent of a student with disabilities or any interested person, including school district employees, believes a school district has violated a requirement of Part B of IDEA, the person may file a written complaint with the department.
2. The complaint must describe the problem, include the name and contact information, and give specific facts about the problem.
3. The complaint must be sent to:
 

Director of Special Education  
 North Dakota Department of Public Instruction  
 600 East Boulevard Avenue, Dept. 201  
 Bismarck, ND 58505-0440
4. When a written complaint is filed, the department shall investigate and render a written decision within sixty days.
5. Any complaint filed under Part B of IDEA must include:
  - a. The date;
  - b. The name of the district, unit, or individual the complaint is against;
  - c. The name, address, and telephone number of the person making the complaint;
  - d. The name, address, and telephone number of the student involved;
  - e. A statement that a public agency has violated a requirement of Part B of the Individuals With Disabilities Education Act identifying the portion of Part B alleged to be violated;
  - f. A summary of the complaint, including facts substantiating an alleged violation of Part B of IDEA; and
  - g. The signature of the person making the complaint.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1221 e-3

**67-23-04-04. Investigation of complaint filed under Part B of IDEA.**

1. An investigation of a complaint under Part B of IDEA must include the following:

- a. Notification to the complainant that the complaint has been received and will be investigated;
  - b. Notification, including a copy of the complaint, to the respondent of the complaint that a complaint has been filed and will be investigated;
  - c. The gathering of information necessary to resolve the complaint; and
  - d. The opportunity for the complainant to submit additional information, either orally or in writing, about the allegations in the complaint.
2. The department has sixty calendar days from the date of the receipt of the complaint to resolve the complaint. An extension of this time limit shall be made in the event of illness or the unavailability of essential persons for interviews with respect to a particular complaint.
  3. The investigation of the complaint must result in a letter of resolution issued by the state director of special education.
  4. The letter of resolution must contain findings of fact, conclusions, and the reasons for the final decision.
  5. The final decision may be one of the following:
    - a. The respondent is in compliance;
    - b. The respondent is not in compliance and voluntary corrective action has taken place during the course of the investigation;
    - c. The respondent is not in compliance and the procedures for effective implementation of the department's final decision are listed and may include technical assistance activities, negotiations, or corrective actions to achieve compliance;
    - d. The superintendent of public instruction may enforce the department's determination of a complaint by withholding state special education funds due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual student's needs; or
    - e. The issues raised fall outside the parameters of Part B of IDEA.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-59-05

**67-23-04-05. Due process hearing under Part B of IDEA.**

1. A due process hearing, which is a formal legal proceeding, may be requested if the parent of a child with disabilities or a child who may have a disability, disagrees with the identification, evaluation, educational placement, or other aspect relating to the student with disabilities for appropriate public education.
2. The school district may also request a due process hearing when a parent has refused consent for evaluation or placement or to demonstrate that the school district has conducted an appropriate evaluation or offered a free appropriate public education to a student with disabilities.
3. Any hearing request must include:
  - a. The name and address of the child;
  - b. The school that the child is attending;
  - c. A description of the problem including facts about the problem; and
  - d. Any suggestions the parent or school district has for solving the problem.
4. Hearing requests are made to:

Director of Special Education  
North Dakota Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440
5. An administrative law judge from the office of administrative hearings shall conduct the hearing.
6. A party to the hearing has the following rights:
  - a. The right to representation by an attorney;
  - b. The right to attendance by individuals who have knowledge or training about children with disabilities;
  - c. The right to present evidence and confront, cross-examine, and require attendance of witnesses;
  - d. The right to a written, or, at the option of the parents, an electronic verbatim record of the hearing; and

- e. The right to a written or, at the option of the parents, an electronic version of the findings of fact and decision.
7. At least five business days before a hearing, school districts and parents must disclose to each other all evaluations of the child completed by that date and recommendations based on those evaluations that are intended to be used at the hearing.
8. The administrative law judge may bar any party that fails to comply with the disclosure of evidence before a hearing or the introduction of undisclosed evaluations or recommendations at the hearing without the consent of the other party.
9. During the process of hearing and appeal, the child with disabilities shall remain in the child's current educational placement, unless:
  - a. The parents and school district agree to another placement;
  - b. The child with disabilities is applying for initial admission to a public school and the parents consent to the child's placement with disabilities in the public school program; or
  - c. The child with disabilities is removed to an interim alternative educational setting by school personnel or a hearing officer.
10. The court may award reasonable attorney's fees to the parents of a child with a disability if they prevail in the action. Attorney's fees may be reduced or denied.
11. The hearing must be completed and a final order issued within forty-five days of the department's receipt of a hearing request unless the administrative law judge grants an extension of time at the request of any party.
12. For purposes of removal of a child with a disability from the child's current educational placement due to discipline procedures:
  - a. If the child's parent disagrees that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.
  - b. The state or local educational agency shall arrange for an expedited hearing in any case described in subdivision a if a hearing is requested by a parent.

- c. If school personnel maintain that it is dangerous for the child to be in the current placement, meaning placement prior to removal to the interim alternative educational setting, during the pendency of the due process proceedings, the local educational agency may request an expedited due process hearing.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1400-1419

**67-23-04-06. Other formal dispute resolution procedures.** Rules regarding dispute resolution between a school district and the department of public instruction regarding state or federal funds are located in chapter 67-22-01.

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

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1400-1419

ARTICLE 67-24

REMEDIAL ELEMENTARY SUMMER SCHOOL PROGRAMS

Chapter  
67-24-01 Remedial Elementary Summer School Programs

CHAPTER 67-24-01  
REMEDIAL ELEMENTARY SUMMER SCHOOL PROGRAMS

|             |                      |
|-------------|----------------------|
| Section     |                      |
| 67-24-01-01 | Eligibility          |
| 67-24-01-02 | Applications         |
| 67-24-01-03 | Courses              |
| 67-24-01-04 | Scheduling           |
| 67-24-01-05 | Students             |
| 67-24-01-06 | Monitoring           |
| 67-24-01-07 | Cooperative Programs |
| 67-24-01-08 | Payments             |

**67-24-01-01. Eligibility.** School districts that wish to receive proportionate payments for remedial elementary summer school programs shall make application to the department of public instruction for approval.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-40.1-07.10  
**Law Implemented:** NDCC 15-40.1-07.10

**67-24-01-02. Applications.** Application forms provided by the department of public instruction must require information including the name of the school; county; district number; the name of the person responsible for the summer program; telephone number; opening and closing dates of the summer program; schedule of courses; teachers' names, social security numbers, majors, minors, teaching certificate numbers with expiration dates, assignments, and schedules; and the school district superintendent's signature.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15-40.1-07.10  
**Law Implemented:** NDCC 15-40.1-07.10

**67-24-01-03. Courses.** The delivery of the courses in the summer school program must be developmentally appropriate instruction in

remedial reading and remedial math which enables students to achieve challenging academic standards.

1. Each course must be part of the elementary curriculum as adopted by the school board and must be offered and available to all eligible elementary students.
2. Each course must be from approved courses listed in the department's manual of K-12 course codes and descriptions, 1998 revised.
3. Teachers must be qualified to teach in accordance with North Dakota Century Code section 15-47-46 or 15-41-25.

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

**General Authority:** NDCC 15-40.1-07.10

**Law Implemented:** NDCC 15-40.1-07.10, 15-41-25, 15-47-46

**67-24-01-04. Scheduling.** Summer remedial elementary programs must be conducted between the closing date and the beginning date of the regular school term. Minimum time requirement for length of the program is sixty hours. Minimum time requirement for individual course time is thirty hours if a student takes both math and reading.

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

**General Authority:** NDCC 15-40.1-07.10

**Law Implemented:** NDCC 15-40.1-07.10

**67-24-01-05. Students.** Students must be in kindergarten through grade eight to qualify for proportionate payments. Students to be served must score below the sixtieth percentile on a standardized or teacher-developed test or have a grade C or below in the previous school term, or both. No more than fifteen students may be served by one licensed teacher.

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

**General Authority:** NDCC 15-40.1-07.10

**Law Implemented:** NDCC 15-40.1-01, 15-40.1-07.10

**67-24-01-06. Monitoring.** The department of public instruction will monitor the programs by reviewing documentation and some onsite visits.

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

**General Authority:** NDCC 15-40.1-07.10

**Law Implemented:** NDCC 15-40.1-07.10

**67-24-01-07. 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 February 1, 2000.

**General Authority:** NDCC 15-40.1-07.10

**Law Implemented:** NDCC 15-40.1-07.10

**67-24-01-08. Payments.** The proportionate payment must be calculated by multiplying average daily membership times the weighting factor for the elementary school determined under North Dakota Century Code section 15-40.1-08 times the educational support per student provided under North Dakota Century Code section 15-40.1-06. If necessary, the educational support per student must be reduced to stay within the total amount of funding made available for remedial elementary programs under North Dakota Century Code section 15-40.1-07.10. Average daily membership must be reported by course and must be computed based on the following formula:

1. Total hours membership divided by one hundred twenty hours times one-fourth times one hundred eighty days equals computed days membership.
2. Aggregate computed days membership divided by one hundred eighty days equals average daily membership.

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

**General Authority:** NDCC 15-40.1-07.10

**Law Implemented:** NDCC 15-40.1-07.10

**ARTICLE 67-25**

**FILING AGREEMENTS MADE WITH FEDERAL AGENCIES**

Chapter  
67-25-01 Filing Agreements Made With Federal Agencies

**CHAPTER 67-25-01**  
**FILING AGREEMENTS MADE WITH FEDERAL AGENCIES**

Section  
67-25-01-01 Notification  
67-25-01-02 Timeline

**67-25-01-01. Notification.** All public tax-supported schools or school systems under the supervision of the superintendent of public instruction shall forward a copy of contracts or agreements entered into with an agency of the federal government.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15.1-02-04, 28-32-02  
**Law Implemented:** NDCC 15.1-02-04, 15.1-02-05

**67-25-01-02. Timeline.** Such copies of contracts or agreements shall be forwarded to the superintendent of public instruction no later than sixty days after the document is executed.

**History:** Effective February 1, 2000.  
**General Authority:** NDCC 15.1-02-04, 28-32-02  
**Law Implemented:** NDCC 15.1-02-04, 15.1-02-05

ARTICLE 67-26

KINDERGARTEN OR FIRST GRADE EARLY ENTRANCE

Chapter  
67-26-01 Kindergarten or First Grade Early Entrance

CHAPTER 67-26-01  
KINDERGARTEN OR FIRST GRADE EARLY ENTRANCE

|             |             |
|-------------|-------------|
| Section     |             |
| 67-26-01-01 | Eligibility |
| 67-26-01-02 | Application |
| 67-26-01-03 | Procedures  |
| 67-26-01-04 | Assessment  |
| 67-26-01-05 | Site        |

**67-26-01-01. Eligibility.** A child must be five years old by the following January first and possess special talents and abilities compared to the child's chronological age to be considered for early entrance into kindergarten. A child must be six years old by the following January first, possess special talents and abilities compared to the child's chronological age, and have completed kindergarten to be considered for early entrance into first grade.

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

**General Authority:** NDCC 15-45-03

**Law Implemented:** NDCC 15-45-02, 15-45-03

**67-26-01-02. Application.** Parents or legal guardians of the child shall request early entrance to kindergarten or first grade from the local school district. The application form must contain the name, birth date, and social security number, if available, of the child; name, address, and telephone number of the parent or guardian; name of the school; district's special education unit number; signature of the administrator; grade level of the child; name of the instrument or assessment procedure; position of persons conducting the assessment; agency represented by the person conducting the assessment; and minimum

standards and criteria. The parents are responsible for obtaining a physical examination for the child by a medical doctor to determine the general health of the child.

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

**General Authority:** NDCC 15-45-03

**Law Implemented:** NDCC 15-45-02, 15-45-03

**67-26-01-03. Procedures.** A preevaluation conference must be held with local administration and parents to discern the basis for early entrance testing. In addition, the following information must be submitted to the department of public instruction and kept for future reference in the appropriate school file:

1. The district or special education unit, or both, shall submit a sequential listing of all evaluation activities. The assessment must include the following areas:
  - a. Group and individual mental maturity;
  - b. Social and emotional maturity;
  - c. Receptive verbal ability;
  - d. Expressive verbal ability;
  - e. Vision;
  - f. Auditory; and
  - g. Fine and gross motor skills;
2. The district or special education unit, or both, shall submit a copy of the checklist used for assigning social and emotional development; and
3. The district shall submit a copy of the news release that will be placed annually in the local newspaper announcing the availability of early entrance testing.

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

**General Authority:** NDCC 15-45-03

**Law Implemented:** NDCC 15-45-02, 15-45-03

**67-26-01-04. Assessment.** A child considered for early entrance must exhibit special talents or abilities through a series of developmental and readiness screening instruments chosen by the local district unit special education director and approved by the department of public instruction. The evaluation committee must include the local site's kindergarten and first grade teachers and the district's special education staff member who administered the screening instruments.

Following testing, a postevaluation conference must provide parents an opportunity to discuss the assessment results and the final determination. Parents must receive a written copy of the evaluation.

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

**General Authority:** NDCC 15-45-03

**Law Implemented:** NDCC 15-45-02, 15-45-03

**67-26-01-05. Site.** Testing must occur at the school site or district special education office.

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

**General Authority:** NDCC 15-45-03

**Law Implemented:** NDCC 15-45-02, 15-45-03

ARTICLE 67-27

OPEN ENROLLMENT PAYMENT PROVISIONS

Chapter  
67-27-01 Open Enrollment Payment Provisions

CHAPTER 67-27-01  
OPEN ENROLLMENT PAYMENT PROVISIONS

Section  
67-27-01-01 Tuition Payments Waived  
67-27-01-02 Costs for Open-Enrolled Students With Disabilities  
67-27-01-03 Foundation Aid Payments  
67-27-01-04 Tuition Apportionment

**67-27-01-01. Tuition payments waived.** School districts educating students who are residents of other school districts are required to pay a tuition charge determined under North Dakota Century Code section 15-40.2-03. However, this tuition charge is waived for students accepted under open enrollment.

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

**General Authority:** NDCC 15.1-02-04, 28-32-02

**Law Implemented:** NDCC 15-40.2-02, 15-40.2-03, 15-40.2-05, 15-40.3-03

**67-27-01-02. Costs for open-enrolled students with disabilities.** In the case of open-enrolled students with disabilities, the admitting district is entitled to reimbursement for education and related services that exceed the admitting district's educational cost per pupil. The educational cost per pupil must be determined on the basis of the district's full-time equivalent average daily membership and include the annual expenditures permitted in determining the educational cost per pupil in North Dakota Century Code section 15-40.1-06. The district of residence is responsible for the cost of these services up to a maximum each school year of two and one-half times the state average educational cost per student. The state is responsible for the costs in excess of this amount.

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

**General Authority:** NDCC 15.1-02-04, 28-32-02

**Law Implemented:** NDCC 15-40.2-02, 15-40.2-03, 15-40.2-05, 15-40.3-03, 15-40.3-04

**67-27-01-03. Foundation aid payments.** Foundation aid for open-enrolled students is paid to the admitting district in accordance with North Dakota Century Code chapter 15-40.1, except in the case of students with disabilities. Foundation aid for a student with disabilities is paid to the district of residence in accordance with North Dakota Century Code section 15-59-06. The district of residence must pay the admitting district the amount of foundation aid received for an open-enrolled student with disabilities.

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

**General Authority:** NDCC 15.1-02-04, 28-32-02

**Law Implemented:** NDCC 15-40-05, 15-40.1-01, 15-40.2-02, 15-40.2-03, 15-40.3-03

**67-27-01-04. Tuition apportionment.** Tuition apportionment for open-enrolled students with disabilities is paid to the admitting district through an adjustment to the school census. The adjustment to the census is made annually by the department by adding one to the census of the admitting district and subtracting one from the census of the district of residence based on the status of the student reported on SFN 50056 fall report of students participating in open enrollment, attached as an appendix to this chapter.

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

**General Authority:** NDCC 15.1-02-04, 28-32-02

**Law Implemented:** NDCC 15-40.2-02, 15-40.2-03, 15-40.2-05, 15-40.3-03



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



DECEMBER 1999

CHAPTER 70-02-01

70-02-01-11. Branch office.

1. **Definition.** If a broker maintains more than one office, then one office shall be designated as the main office and each additional office shall constitute a branch office. If a real estate broker maintains a regular office, the broker's home shall not be considered a branch office.
2. **Applications.** The broker desiring to open a branch office shall file with the commission an application for a branch office license on forms provided by the commission.
3. **Supervision.** ~~The applicant broker shall employ a licensed real estate broker to aid the broker in actively managing each branch office and to aid the broker in supervising the licensees working from such branch office.~~ The applicant broker must designate the applicant broker or another licensee to act as branch office manager to aid the broker in actively managing each branch office and to aid the broker in supervising the licensees working from such branch office. The designated licensee shall be responsible for all activities of that branch office. The applicant broker may designate the applicant broker to act as manager for all branch offices.
4. **Notification to commission of change.** It shall be the responsibility of the ~~employing~~ applicant broker to notify the commission in writing of any change of address of a branch office or change of supervisor of the branch office, within ten days after the change.

5. **Notification to commission.** The ~~employing~~ applicant broker shall at all times notify the commission of the location and address of each branch office which the broker operates and the name of the ~~broker~~ licensee who supervises the branch office.
6. **Additional office.** Every additional office or place of business, other than the principal place of business of a broker, shall be licensed only with the approval of the commission and only after the applicant broker has given satisfactory proof that this additional office shall be under the supervision of a duly authorized ~~broker-employee~~ licensee.
7. **Display license.** A branch license shall be displayed in the branch office, shall bear the address of the branch office, and shall bear the name of the ~~broker-employed~~ licensee designated to actively manage the branch office.
8. **Identical name.** The branch office must be operated under the same name as the principal office.

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

**General Authority:** NDCC 43-23-11.1(3)

**Law Implemented:** NDCC 43-23-13(5)

**70-02-01-15. Trust account requirements - Handling of funds - Records.**

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in an authorized financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.
  - a. **Definitions.** The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.
  - b. **Name of account.** The name of such separate account shall be identified by the words "trust account" or "escrow account".
  - c. **Notification.** Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts

on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of depository, change of account number, change of business name, or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.

- d. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.
- e. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed one five hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.
- f. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.
- g. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.
- h. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.
- i. Interest-bearing accounts. All trust accounts must be interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission.

2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.
  - a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.
  - b. Withdrawals. Money held in the separate account which is due and payable to the broker should be withdrawn promptly.
  - c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a provision for division of moneys taken in earnest, when the transaction is not consummated and such moneys retained as forfeiture payment.
3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:
  - a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.
  - b. Bank statements. Monthly bank statements are to be retained and kept on file.
  - c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".
  - d. Journal. A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:
    - (1) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.
    - (2) For disbursements, the journal must include the date, the payee, and the amount.
    - (3) For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.

- (4) A running balance must be shown after each entry (receipt or disbursement).
- e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown.
  - f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.
  - g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

**History:** Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999.

**General Authority:** NDCC 43-23-14.1, 43-23.4-06(2)

**Law Implemented:** NDCC 43-23-11.1(1)

CHAPTER 70-02-02

70-02-02-18. Distance education courses must be approved. Courses of study offered in a distance education format must be approved by the real estate commission and certified by the association of real estate license law officials. A student must complete the distance education course within one year of the date of enrollment.

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

**General Authority:** NDCC 43-23-08.1

**Law Implemented:** NDCC 43-23-08

## CHAPTER 70-02-04

**70-02-04-02. Hours required.** To qualify for the renewal of a real estate license, each broker or salesperson must complete ~~twenty-four~~ sixteen hours of continuing education in approved courses before January 1, ~~1984~~ 2002, and every ~~three~~ two years thereafter. A minimum of six of the required sixteen hours of continuing education must be completed in the first year of each two-year period. The commission may require that up to six hours of the total completed each ~~three-year~~ two-year period must be in one or more specific areas. Such areas may include the following:

1. Fair housing and antitrust.
2. Environmental issues.
3. License law and ethics.
4. Agency law and principles.
5. Contracts.

**History:** Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999.

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

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

**70-02-04-05. Nonqualifying courses.** The following course offerings will not be considered as qualifying for continuing education purposes:

1. "Cram courses" for examinations.
2. Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, language, and report writing.
3. Sales promotion or other meetings held in conjunction with the general business of the attendee or the attendee's employer.
4. Time devoted to breakfast, luncheons, or dinners.
5. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive certification.
6. Any course hours in excess of ~~eight~~ six obtained by correspondence within the ~~three-year~~ two-year certification period.

The listing of the above offerings does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.

**History:** Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999.

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

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

**70-02-04-13. Substantively identical offerings.** Courses may not be taken for continuing education more than once during any ~~three-year~~ two-year period, unless material has been significantly changed, or updated, or both.

**History:** Effective August 1, 1981; amended effective December 1, 1999.

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

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

**70-02-04-15. Exemptions from continuing education requirement.** Any salesperson applicant, upon successful completion of the real estate licensing examination, shall be exempt from the ~~twenty-four-hour~~ sixteen-hour continuing education requirement for only the ~~three-year~~ two-year period during which the applicant successfully completed such examination. Any broker applicant, upon successful completion of the real estate licensing examination, and the successful completion of a minimum of thirty classroom hours of prelicensing education earned within the same ~~three-year~~ two-year period in which the applicant has written the licensing examination, shall be exempt from the ~~twenty-four-hour~~ sixteen-hour continuing education requirement only for such ~~three-year~~ two-year period.

**History:** Effective August 1, 1981; amended effective January 1, 1992; December 1, 1999.

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

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

**70-02-04-16. Service as a lecturer, discussion leader, or speaker.** For those persons who serve as a lecturer, discussion leader, or speaker regarding a real estate continuing education program, the commission will grant one-hour credit for every hour of service as an instructor or speaker. Requests for credit must be accompanied by an outline of the instruction, discussion, or speech.

No credit shall be given for the teaching of a course which is the same or substantially the same as one taught for credit within the same ~~three-year~~ two-year period.

The maximum credit given for service as a lecturer, discussion leader, or speaker will not exceed fifty percent of the continuing education requirement for any ~~three-year~~ two-year period.

**History:** Effective August 1, 1981; amended effective December 1, 1999.  
**General Authority:** NDCC 43-23-08.2  
**Law Implemented:** NDCC 43-23-08.2

**70-02-04-19. Certificate of accreditation.** A certificate of accreditation shall be granted for each course of study approved by the commission. This certificate shall remain valid for a ~~three-year~~ two-year period at which time the course will be reviewed and, if approved, will continue valid for the next ~~three-year~~ two-year period unless suspended or revoked.

**History:** Effective August 1, 1981; amended effective December 1, 1999.  
**General Authority:** NDCC 43-23-08.2  
**Law Implemented:** NDCC 43-23-08.2

**70-02-04-21. Continuing education certificate of attendance.** All schools, seminars, and workshops shall provide an individual certificate of attendance to each licensee upon completion of the educational program or training session under the following conditions:

1. No certificate of attendance shall be issued to a licensee who is absent for more than ten percent of the classroom hours.
2. The certificate shall contain information as to the licensee's name, course title, date, location of course, number of approved credit hours, and signature of course sponsor or instructor.
3. The licensee shall retain the attendance certificate and attach it to the application for renewal of the licensee's license at the time of renewal. ~~The licensee shall not submit the attendance certificates to the commission before the renewal application for 1984 and thereafter at the end of each three-year period.~~ The responsibility for recordkeeping will remain with the licensee.
4. The North Dakota real estate commission shall not be required to maintain a list of licensees and their completed courses of education.

**History:** Effective August 1, 1981; amended effective December 1, 1999.  
**General Authority:** NDCC 43-23-08.2  
**Law Implemented:** NDCC 43-23-08.2

**70-02-04-22. Distance education courses must be approved.** Courses of study offered in a distance education format must be approved by the real estate commission and certified by the association of real estate license law officials. A student must complete the distance education course within one year of the date of enrollment.

**History:** Effective December 1, 1999.  
**General Authority:** NDCC 43-23-08.2  
**Law Implemented:** NDCC 43-23-08.2

**TITLE 75**  
**Department of Human Services**



JANUARY 2000

CHAPTER 75-02-06

**75-02-06-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the 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~~ a contribution to a civic organization--and organization or sponsorship of community activities. It does not include ~~donations~~ a donation to charities a charity.
  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 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 or has been identified in a resident assessment instrument as "discharged anticipated to return".
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. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
44. "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:~~ 45. "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:~~ 46. "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:~~ 47. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- ~~47:~~ 48. "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:~~ 49. "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- 50. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
- 50- 51. "Private room" means a room equipped for use by only one resident.
- 51- 52. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
- 52- 53. "Provider" means the organization or individual who has executed a provider agreement with the department.
- 53- 54. "Rate year" means the calendar year from January first through December thirty-first.
- 54- 55. "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- 56. "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- 57. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- 57- 58. "Resident" means a person who has been admitted to the facility, but not discharged.
- 58- 59. "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: 60. "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: 61. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- 61: 62. "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: 63. "Standardized resident day" means a resident day times the classification weight for the resident.
- 63: 64. "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: 65. "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: 66. "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; July 1, 1999.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-02.2. Direct care costs.** Direct care costs include only those costs identified in this section.

**1. Therapies.**

- a. Salary and employment benefits for speech, occupational, and physical therapists, or for personnel, who are not reported in subsection 2, performing therapy under the direction of a licensed therapist.
- b. The cost of noncapitalized therapy equipment or supplies used to directly provide therapy.
- c. Training required to maintain licensure, certification, or professional standards, and the related travel costs.

**2. Nursing.**

- a. Salary and employment benefits for the director of nursing, nursing supervisors, inservice trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, nurse aides, orderlies, individuals providing assistance with activities of daily living, and ward clerks.
- b. Routine nursing care supplies including items furnished routinely and relatively uniformly to all residents; items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities; and items used by individual residents that are reusable, vary by the needs of an individual, and are expected to be available in the facility.
- c. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.
- d. Routine hair care.
- e. The cost of noncapitalized wheelchairs.

**History:** Effective January 1, 1990; amended effective January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1999.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-02.4. Indirect care costs.** Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

- 1. **Administration.** Direct costs for administering the overall activities of the facility include:
  - a. Salary and employment benefits for administrators, except in a facility of sixty or fewer beds, part of an administrator's salary may be allocated to other cost

categories provided adequate records identifying the hours and services provided are maintained by the facility.

- b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries and receptionists, data processing personnel, purchasing, receiving, and store personnel, medical director, security personnel, and of all personnel not designated in other cost categories.
- c. Board of directors' fees and related travel expenses.
- d. Security personnel or services.
- e. Supplies except as specifically provided for in the direct care, other direct care, and other cost centers of the indirect care cost category.
- f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
- g. Telephone and telegraph.
- h. Postage and freight.
- i. Membership dues and subscriptions.
- j. Professional fees for services such as legal, accounting, and data processing.
- k. Central or home office costs including property costs except as provided for in section 75-02-06-06.1.
- l. Advertising and personnel recruitment costs.
- m. Management consultants and fees.
- n. Bad debts and collection fees as provided for in section 75-02-06-10.
- o. Business meetings, conventions, association meetings, and seminars.
- p. Travel, except as necessary for training programs for personnel required to maintain licensure, certification, or professional standards requirements.
- q. Training, except for training for personnel required to maintain licensure, certification, or professional standards requirements.

- r. Business office functions.
  - s. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
  - t. Working capital interest.
  - u. Any costs that cannot be specifically classified to other cost categories.
2. **Chaplain.**
- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
  - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
3. **Pharmacy.** Compensation for pharmacy consultants.
4. **Plant operations.**
- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.
  - b. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
  - c. Repairs and maintenance contracts and purchased services.
  - d. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.
  - e. Motor vehicle operating and resident transportation expenses.
5. **Housekeeping.**
- a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning or housekeeping personnel.
  - b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
  - c. Contracted services for housekeeping.

6. **Dietary.**

- a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
- b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.

7. **Medical records.** Salary and employment benefits for personnel performing medical records maintenance.

**History:** Effective January 1, 1990; amended effective November 1, 1992; November 22, 1993; January 1, 1996; July 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, and utility costs, 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, and utility costs.
  - (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, and utility costs, exceed five percent of total facility costs, exclusive of property, administration, and chaplain, and utility costs, administration costs must be allocated on the basis of the percentage of total cost, excluding property, administration, and chaplain, and utility costs.
  - b. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain, and utility costs, are less than five percent of total facility costs, exclusive of property, administration, and chaplain, and utility costs, administration costs must be allocated to each activity based on the ~~percent~~ percentage 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; July 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 for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 1992 1996. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- d. The limit rate for each of the cost categories must be established as follows:
  - (1) Historical costs for the report year ended June 30, 1992 1996, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
  - (2) For the rate year years beginning on or after January 1, 1998, the limit rate for the direct care cost category is thirty-five dollars and eighty-one cents, for the other direct care cost category is eleven dollars and eighty-three cents, and for the indirect care cost category is twenty-six dollars and seventy-six cents. 2000, the limit rate for each cost category is calculated based on:
  - (3) For the rate year beginning January 1, 1999, the limit rate established in 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 For the direct care cost category, the rate for the facility at the ninety-ninth percentile ranking from paragraph 1, multiplied times a factor of 1.72119, and then multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4;

(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-4)-to establish-the-limit-rate-for-each-cost-category. For the other direct care cost category, the rate for the facility at the eighty-fifth percentile ranking from paragraph 1, multiplied times a factor of 1.05776, and then multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4; and

(c) For the indirect care cost category, the rate for the facility at the seventy-fifth percentile ranking from paragraph 1, multiplied times a factor of 1.05776, and then multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4.

{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;

- e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
  - (1) Actual census for the report year; or

- (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
  - (a) Multiplied times three hundred sixty-five; and
  - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
- g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
  - (1) The facility has reduced licensed capacity; or
  - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.
- 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 2000, 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 ten cents per day for the rate weight of one.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least five ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c ~~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 ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
- (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least five ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
- (c) Adjustments resulting from an audit of home office costs, that result in a change of at least five ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.
- (d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
- (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate

chargeable to private-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, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.
- d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, and indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must be established based

on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
  - f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.
  - g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. One-time adjustments.
- a. Adjustments to meet certification standards.

- (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.
- (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:
  - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;
  - (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
  - (c) Provide a detailed list of any other costs necessary to meet survey standards.
- (3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.
- (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
- (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:

- (a) An explanation as to why the facility believes the expense was unforeseeable;
  - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
  - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
- (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on 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 ten cents per day for the rate weight of one.

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; July 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 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 thirty-four classifications based on the resident assessment. If a resident assessment is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be included in group BC1, not classified, until the next required resident assessment is performed in accordance with subsection 3. For purposes of determining standardized resident days, any resident day classified as group 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 group BC1 established rate. 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 when determining standardized resident days.

3. Resident assessments must be completed as follows:
  - a. The facility shall assess the resident within the first fourteen days after any admission or return from an acute hospital stay.
  - b. The facility shall assess the resident quarterly after any admission or return from an acute hospital stay. The quarterly assessment ~~date is~~ reference period ends on the day of the third subsequent month corresponding to the day of admission or return from an acute hospital stay, except if that month does not have a corresponding date, the quarterly assessment date is reference period ends on the last first day of that the next month. The assessment ~~may be completed up to seven days prior to the quarterly assessment date~~ reference period begins seven days prior to the ending date of a quarterly assessment period. The assessment reference date used for the resident assessment instrument must be within the assessment reference period.
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 medications or 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~~ received intravenous medications or intravenous feeding;
- (c) Whether the resident received tracheostomy care and suctioning; or
- (d) Whether the resident required a ventilator or respirator.
- 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;
  - (n) Oxygen therapy in the fourteen days preceding the assessment; or
  - (o) Within the fourteen days preceding the assessment, at least one physician visit with at least four order changes or at least two physician visits with at least two order changes.
- (2) A resident who qualifies for the clinically complex category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.
- e. Impaired cognition category. To qualify for the impaired cognition category, a resident must have a cognition performance scale score of three, four, or five and an activities of daily living score of less than eleven. A resident who qualifies for the impaired cognition category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
- f. Behavior only category.
- (1) To qualify for the behavior only category, a resident must have exhibited, in four of the seven days preceding the assessment, one or more of the following behaviors:
    - (a) Resisting care;
    - (b) Combativeness;
    - (c) Physical abuse;
    - (d) Verbal abuse;
    - (e) Wandering; or

- (f) Hallucinating or having delusions.
  - (2) A resident who qualifies for the behavior only category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
  - g. Reduced physical functioning category. To qualify for the reduced physical functioning category, a resident may not qualify for any other group. A resident who qualifies for the reduced physical functioning category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
7. Except as provided in subsection 2, each resident must be classified into a case-mix class with the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:
- a. Rehabilitation with an activities of daily living score of 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.
8. The classification is effective the date the resident assessment must be completed in all cases except an admission or for a return from an acute hospital stay. The classification for an admission or for a return is effective the date of the admission or return.

9. A facility complying with any provision of this section that requires a resident assessment must use the minimum data set in a resident assessment instrument that conforms to standards for a resident classification system described in 42 CFR 413.333.

**History:** Effective September 1, 1987; amended effective January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; July 1, 1999.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-22. Participation requirement.** A facility must comply with the following provisions in order to be eligible to receive medical assistance payments.

1. A facility may not charge private-pay residents rates that exceed those rates approved by the department for medical assistance recipients, except that:
  - a. A facility may charge a higher rate for a private room.
  - b. A facility may charge for special services not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services. Special services must be available to all residents and residents must be free to select or decline the special services. Special services may not include services provided by the facility in order to comply with licensure or certification standards which, if not provided, would result in a deficiency or violation by the facility. Services beyond those required to comply with licensure or certification standards may not be charged separately as special services if the services were included as allowable costs used to establish the current established rate. Special services may include cable television, telephones, long-distance calls, nonroutine hair care such as permanents requested by a resident, and the additional cost of brand name supplies requested by a resident and not ordinarily stocked. A facility shall inform the resident or a person acting on behalf of the resident that a charge may be made and the amount of the charge at the time a request for the special services is made.
  - c. A facility may charge to hold a bed for a period in excess of the periods covered by subsections 3, 4, 5, and 6 of section 75-02-06-14 if:
    - (1) The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge;

- (2) For a medical assistance resident, the payment comes from sources other than from the resident's monthly income; and
  - (3) All residents are charged the same amount.
- d. A facility may charge for medicare part A and part B coinsurance and deductibles.
2. A facility may not require, as a condition of admission, any applicant to pay a fee or a deposit, loan any money to the facility, or promise to leave all or part of the applicant's estate to the facility.
3. A facility may not require any resident to use a vendor of health care services who is a licensed physician or pharmacist chosen by the facility.
4. A facility may not provide differential treatment on the basis of status with regard to public assistance.
5. A facility may not discriminate in admission, services offered, or room assignment on the basis of status with regard to medical assistance. The collection and use by a facility of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the facility is using that information for any purpose prohibited by this chapter. Admission discrimination includes:
  - a. Basing admission decisions upon an assurance by the applicant to the facility, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek medical assistance for payment of facility care costs; or
  - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.
6. A facility may not require any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the fee to the facility except as payment for the fair market value of renting or leasing space or equipment of the facility or purchasing support services, if those agreements are disclosed to the department.
7. A facility may not refuse, for more than twenty-four hours, to accept a resident returning to the same bed or an available bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.

8. A facility may not violate any rights of a health care facility resident as set forth in North Dakota Century Code section 50-10.2-02.
9. Any facility certified as a nursing facility shall participate in medicare part A and part B with respect to at least thirty percent of the beds in the facility.
10. If medicare covered services are provided to a resident who is simultaneously eligible for medical assistance and medicare, the facility shall bill for medicare part A and part B before billing medical assistance, and may not bill medical assistance if the resident, or someone acting on the resident's behalf, has refused or waived use of available medicare benefits. The department may be billed only for charges not payable by medicare. Medicare part B covered services are not included in the daily rate.
11. A facility shall file on behalf of each resident or assist each resident in filing requests for any third-party benefits to which the resident may be entitled.
12. A facility shall be certified to participate in the medical assistance program and have a provider agreement with the department.
13. If a facility does not comply with the provisions of this section, the department may continue, if extreme hardship to the residents would otherwise result, to make medical assistance payments to the facility for a period not to exceed one hundred eighty days from the date of mailing a formal notice. In these cases, the department shall issue an order requiring the facility to correct the violation. If the violation is not corrected within the twenty-day period, the department may reduce the payment rate to the facility by up to twenty percent. The amount of the payment rate reduction must be related to the severity of the violation, and must remain in effect until the violation is corrected. The facility may seek reconsideration of or appeal the department's action as provided for in section 75-02-06-25.
14. A facility may charge a higher rate for a private room used by a medical assistance resident if:
  - a. The private room is not medically necessary;
  - b. The resident, or a person acting on behalf of the resident, has requested the private room and the facility informs the person making the request, at the time of the request, of the amount of the payment and that the payment must come from sources other than a resident's monthly income; and

- c. The payment does not exceed the amount charged to private-pay residents.
- 15. A facility may not accept any payment to hold a bed prior to the admission of a resident.
- 16. A facility shall readmit a resident whose leave exceeds the facility's bed hold period upon the first availability of a bed in a semiprivate room if the resident:
  - a. Requires the services provided by the facility; and
  - b. Is eligible for medical assistance.
- 17. A facility may not charge a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

**History:** Effective January 1, 1996; amended effective January 1, 1998; July 1, 1999.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-24. Exclusions.**

- 1. A facility that exclusively provides residential services for the nongeriatric physically--handicapped individuals with physical disabilities or a unit within a facility which exclusively provides geropsychiatric services shall not be included in the calculation of the rate limitations and its rate must not be limited by such limitations. The facility rate or the rate for a unit within a facility which exclusively provides geropsychiatric services must be established using the actual allowable historical costs adjusted by the indices under subsection 4 of section 75-02-06-16. Actual allowable historical costs must be determined using the applicable sections of the policies and procedures. An operating margin and incentive determined under subsection 2 of section 75-02-06-16 must be included in the facility rate.
- 2. A facility may establish a rate for respite care, hospice inpatient respite care, or hospice general inpatient care services.

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

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-25. Notification of rates.**

1. The department shall notify each facility of the desk audit rate on or before November twenty-second of the year preceding the rate year, except a facility that has requested and received a cost reporting deadline extension of fifteen days or less shall be notified on or before November thirtieth of the year preceding the rate year, and a facility that has requested and received a cost reporting deadline extension in excess of fifteen days shall be notified on or before December fifteenth of the year preceding the rate year.
2. The facility shall provide to all private-pay residents a thirty-day written notification of any increase in the rates for each classification. An increase in rates is not effective unless the facility has notified private-pay residents that the rate increase is effective by the first day of the second month following the date of notification by the department. If the facility does not notify private-pay residents by the first day of the first month following notification by the department, the established rate in effect at the time of notification by the department must remain in effect until the date the rate is payable by private-pay residents. No retroactive adjustment may be made to an established rate that remains in effect because the facility did not promptly notify private-pay residents unless the adjustment would result in a decrease of at least five ten cents per day for the rate weight of one. A facility may make a rate change without giving a thirty-day written notice when the purpose of the rate change is to reflect a necessary change in the case-mix classification of a resident.
3. If the department fails to notify the facility of the desk rate, as provided in subsection 1, the time required for giving written notice, as provided for in subsection 2, must be decreased by the number of days by which the department was late in setting the rate.

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

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

## CHAPTER 75-02-07.1

### 75-02-07.1-01. Definitions.

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 factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.
6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.
7. "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 4 of section 75-02-07.1-13;
  - b. A sale and leaseback to the same licensee;
  - c. A transfer of an interest to a trust;
  - d. Gifts or other transfer for nominal or no consideration;
  - e. A change in the legal form of doing business;
  - f. The addition or deletion of a partner, owner, or shareholder; or
  - g. A sale, merger, reorganization, or any other transfer of interest between related organizations.

8. "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 if used directly for resident care.
9. "Capital assets" 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.
10. "Chain organization" means a group of two or more basic care or 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 basic care or health care.
11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
12. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.
14. "Cost center" means a division, department, or subdivision thereof, group of services or employees, or both, or any unit or type of activity into which functions of a facility are decided for purposes of cost assignment and allocations.
15. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.
16. "Department" means the department of human services.
17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
18. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American

hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1993 1998 edition.

20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
21. "Direct care costs" means the cost category for allowable resident care, activities, social services, laundry, and food costs.
22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
24. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
25. "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.
26. "Established rate" means the rate paid for services.
27. "Facility" means a licensed basic care facility not owned or administered by state government.
28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
31. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.
32. "Fringe benefits" means ~~worker's~~ workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.

33. "Highest market driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
35. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
36. "In-house resident day" for basic care and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.
37. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
38. "Limit rate" means the rate established as the maximum allowable rate.
39. "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.
40. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.
41. "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.
42. "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.
43. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

44. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
45. "Private room" means a room equipped for use by only one resident.
46. "Property costs" means the cost category for allowable real property costs and pass-through costs.
47. "Provider" means the organization or individual who has executed a provider agreement with the department.
48. "Rate year" means the year from July first through June thirtieth.
49. "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 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.
50. "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.
51. "Report year" means the provider's fiscal year ending during the calendar year immediately preceding the rate year.
52. "Resident" means a person who has been admitted to the facility, but not discharged.
53. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave 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. The amount of remuneration has no bearing on whether a day should be counted as a resident day.
54. "Routine hair care" means hair hygiene which includes grooming and shampooing.

55. "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. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.
56. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
57. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
58. "Working capital debt" means debt incurred to finance 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 July 1, 1996; amended effective July 1, 1998; July 1, 1999.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

#### **75-02-07.1-09. 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 other residential or health care facilities, except for a nursing facility, the following allocation methods must be used:
    - (1) Resident care 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, resident care salaries must be allocated based on revenues for resident services.

- (2) Salaries for a director of resident care or resident care supervisors that cannot be reported based on actual costs or time studies must be allocated based on resident care salaries or full-time equivalents of resident care staff.
- (3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents of supervised staff.
- (4) Other resident care costs must be allocated based on resident days.
- (5) Dietary and food costs must be allocated based on the number of meals served or in-house resident days.
- (6) Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.
- (7) Activity costs must be allocated based on in-house resident days.
- (8) Social service costs must be allocated based on resident days.
- (9) Housekeeping costs must be allocated based on weighted square footage.
- (10) Plant operation costs must be allocated based on weighted square footage.
- (11) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
- (12) Pharmacy costs for consultants must be allocated based on in-house resident days.
- (13) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding property, administration, and chaplain, and utility costs, in each facility.
- (14) 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.
- (15) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.

- (16) 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 department. 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 may not be included as facility 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 is combined with a nursing facility, the allocation methodologies, exceptions, and waivers set forth in chapter 75-02-06 must also be used for the facility.
3. If a facility cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:
- a. Salaries must be allocated using facility-estimated 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 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 no-estimates-are made time studies are not completed, salaries must be allocated entirely to indirect care costs if any of the employee's job duties are included in this cost category.
  - b. Employment benefits must be allocated based on the ratio of salaries in the cost center to total salaries.

4. 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, and utility costs, exceed five percent of total facility costs, exclusive of property, administration, and chaplain, and utility costs, administration costs must be allocated on the basis of the percentage of total costs, excluding property, administration, and chaplain, and utility costs.
  - b. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain, and utility costs, are less than five percent of total facility costs, exclusive of property, administration, and chaplain, and utility 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 health care facilities associated with a facility.
5. All costs associated with a vehicle not exclusively used by a facility must be allocated between resident-related and nonresident-related activities based on mileage logs.

**History:** Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999.

**General Authority:** NDCC 50-06-15 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

**75-02-07.1-10. Nonallowable costs.** Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of the facility and its 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 75-02-07.1-08;
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, YMCA, country clubs, or 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, 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 stockbroker and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with the acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with the transaction described in subsection 4 of section 75-02-07.1-13; 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 portion of the 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 administration 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 health care facility or basic care 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 1, 1995;
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. Nonbasic care facility operations and associated administration costs;
21. All costs for services paid directly by a government entity to an outside provider, such as prescription drugs;
22. 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;

23. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;
24. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;
25. 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;
26. 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;
27. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion which relates to costs that benefit all eligible employees;
28. 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;
29. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;
30. 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;
31. 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 such as individual proprietors, partners, or members of a joint venture;
32. The unvested portion of a facility's accrual for sick or annual leave;
  33. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the facility's fiscal yearend;
  34. Employment benefits associated with salary costs not includable in a rate set under this chapter;
  35. The cost, including depreciation, of equipment or items purchased with funds received from a government agency;
  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 July 1, 1999.
  39. Increased lease costs of a provider except to the extent:
    - 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. Bad debts expense;
  - 41. Costs associated with or paid for the acquisition of licensed basic care capacity; and
  - 42. Goodwill.

**History:** Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999.

**General Authority:** NDCC 50-06-15 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

~~75-02-07.1-20. Rate calculation. The actual rate is calculated using allowable historical operating costs plus adjustment factors, as provided in section 75-02-07.1-21, divided by resident days. The actual rate as calculated is compared to the limit rate to determine the lesser of the actual rate or the limit rate. The lesser of the actual rate or the limit rate provided for in section 75-02-07.1-22 is the established rate.~~

1. For each cost category, the actual rate is calculated using allowable historical operating costs plus adjustment factors provided for in section 75-02-07.1-21 for the direct care and indirect care cost categories, divided by actual resident census for the direct care cost category and resident days as provided for in section 75-02-07.1-22 for the indirect care and property cost categories. The actual rate as calculated for direct care and indirect care is compared to the limit rate for each category to determine the lesser of the actual rate or the limit rate. The lesser of the actual rates or the limit rates for direct care and indirect care costs, the actual rate for property, and the operating margin provided for in section 75-02-07.1-22 are then added to establish the facility's rate.
2. The established rate for a licensed nursing facility providing services to an eligible beneficiary is:
  - a. For a nursing facility that shares basic services with a licensed basic care facility, the rate established for the licensed basic care facility as provided for in subsection 1; and
  - b. For a nursing facility that does not share basic services with a licensed basic care facility, the sum of the limit

rates for direct care and indirect care costs, the maximum three percent operating margin calculated in section 75-02-07.1-21, and the nursing facility's property rate component established under chapter 75-02-06.

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

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

#### **75-02-07.1-22. Rate limitations.**

1. Historical costs, as adjusted, for all facilities for which a rate is established, must be used in the establishment of a limit rate for the direct care and indirect care cost categories. The actual rate for each cost category for each facility must be determined in accordance with this chapter. The department shall, for each cost category, rank licensed beds in all facilities reporting historical costs by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. This rate shall be is the limit rate. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate for that cost category.
2. If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall determine reduced rates for all facilities with substantial capacity increases and for all new facilities.
3. The reduced rate for each facility subject to a reduced rate is determined by:
  - a. Establishing the total appropriation available for supplements during that reduced rate quarter;
  - b. Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;
  - c. Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;
  - d. Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with substantial capacity increases and in all new facilities, if those facilities were not subject to limits;

- e. Subtracting the amount projected under subdivision c from the amount determined under subdivision a;
  - f. Subtracting the amount determined under subdivision e from the amount projected under subdivision d;
  - g. Dividing the amount determined under subdivision f by the number projected under subdivision b; and
  - h. Reducing the established rate set for that facility by the amount determined under subdivision g.
4. A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.
  5. A reduced rate is effective during the reduced rate quarter for which it is established.
  6. A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment is made to the facility for services furnished during the first month of the reduced rate quarter.
  7. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.
  8. Resident days used to calculate the actual rate for the indirect care and property cost categories are the greater of:
    - a. Actual census for the report year; or
    - b. Ninety percent of licensed bed capacity available for occupancy as of the last day of the report year:
      - (1) Multiplied times three hundred sixty-five; and
      - (2) 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.
  9. For purposes of this section:
    - a. "New facility" means a facility for which no rate was set, under this chapter, for any period before July 1, 1995.

- b. "Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.
- c. "Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than a facility's licensed capacity on July 1, 1995, or a capacity increase to a licensed capacity equal to or greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.
- d. "Supplement" means payments provided or the provision of payments under North Dakota Century Code chapter 50-24.5.

**History:** Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

## CHAPTER 75-03-20

### 75-03-20-04. Ratesetting.

1. The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. No retroactive settlements for actual costs incurred during the rate year which exceed the final rate will be made unless specifically provided for in this chapter.
2. Desk audit rate.
  - a. The department will establish desk rates for maintenance and rehabilitation, based on the cost report, which will be effective the first day of the seventh month following the center's fiscal yearend.
  - b. The desk rates will continue in effect until final rates are established.
  - c. The cost report will be reviewed taking into consideration the prior year's adjustments. Centers will be notified by telephone or mail of any desk adjustments based on the desk review. Within seven working days after notification, the center may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rates.
  - d. No reconsideration will be given by the department for the desk rates unless the center has been notified that the desk rates are the final rates.
3. Final rate.
  - a. The cost report may be field audited to establish final rates. If no field audit is performed, the desk rates will become the final rates upon notification to the center from the department.
  - b. The final rate for rehabilitation will be effective beginning the first day of the seventh month following the center's fiscal yearend.
  - c. The final rate for maintenance will be effective beginning the first day of the month in which notification of the rate is given to the center. There will be no retroactive

adjustments to the beginning of the rate year for any increase or decrease in the maintenance rate.

- d. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least five cents per day.
- e. Adjustments, errors, or omissions which are found after a final rate has been established will be included as an adjustment in the report year that the adjustments, errors, or omissions are found.

4. Special rates.

a. Centers providing services for the first time.

(1) Rates for a center which is providing services which are purchased by the department will be established using the following methodology for the first two fiscal years of the center if such period is less than twenty-four months.

(a) The center must submit a budget for the first twelve months of operation. A final rate will be established for a rate period which begins on the first of the month in which the center begins operation. This rate will remain in effect for eighteen months. No adjustment factors will be included in the first year final rate.

(b) Upon completion of the first twelve months of operation, the center must submit a cost report for the twelve-month period regardless of the fiscal yearend of the center.

[1] The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.

[2] The twelve-month cost report will be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors will be used to establish the rate.

(2) The center must submit a cost report which will be used to establish rates in accordance with subsections 2 and 3 after the center has been in operation for the entire twelve months of the center's fiscal year.

- b. Centers changing ownership.
  - (1) For centers changing ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change occurred.
  - (2) The rate for the second rate year after a change in ownership occurs will be established as follows:
    - (a) For a center with four or more months of operation under the new ownership during the report year, a cost report for the period since the ownership change occurred will be used to establish the rate for the next rate year.
    - (b) For a center with less than four months of operation under the new ownership in the reporting year, the prior report year's costs as adjusted for the previous owner will be indexed forward using appropriate adjustments.
- c. Centers having a capacity increase or major renovation or construction.
  - (1) For centers which increase licensed capacity by twenty percent or more or have renovation or construction projects in excess of fifty thousand dollars, the rate established for the rate year in which the licensed increase occurs or the construction or renovation is complete may be adjusted to include projected property costs. The adjusted rate will be calculated based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical census, plus a rate for property costs based on projected property costs divided by projected census. The established rate for rehabilitation, including projected property costs, will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary. The established rate for maintenance including projected property costs will be effective on the first of the month in which notification of the rate is given to the center.
  - (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, a rate will be established based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported census plus a rate

for property costs, based on projected property costs, divided by projected census.

d. Centers that have changes in services or staff.

- (1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or staff to the existing program.
  - (2) The center must submit information to the division of mental health services supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.
  - (3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate will be adjusted. The effective date of the rate increase will be on the first of the month following approval by the department. The adjustment will not be retroactive to the beginning of the rate year.
  - (4) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 3 of ~~this---subdivision~~, the center may request that consideration be given to additional costs. The center must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period.
5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-20-06. For any client whose rate is paid in whole or in part by the department, no payment may be solicited or received from the client or any other person to supplement the rate as established.
  6. For a center terminating its participation in the program, whether voluntarily or involuntarily, the department may authorize the center to receive continued payment until clients can be relocated.
  7. Limitations.
    - a. The department may accumulate and analyze statistics on costs incurred by the centers. These 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. These limitations and incentives may be established on the basis of cost of comparable centers and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. Limitations and incentives are effective upon notification of a center by the department.

- b. Allowable administration costs to be included in the maintenance and rehabilitation rates are the lesser of the actual cost of administration as allocated to the cost category or an amount equal to fifteen percent of the allowable costs for the cost category.
8. Adjustment factors. ~~The department will use an independent economic forecast method of predicting the adjustment factors to be used to adjust historical allowable costs. The department will use the independent economic forecaster used by the office of management and budget at the time the rate is established. Adjustment factors will be based on the forecasted increase or decrease in cost components for the eighteen-month period from the end of the report year to the end of the rate year. The following cost components will have individual adjustment factors calculated for each rate year:~~ Adjustment factors may be applied to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.

~~a. Salaries and fringe benefits;~~

~~b. Food;~~

~~c. Utilities; and~~

~~d. Other costs exclusive of property costs.~~

History: Effective December 1, 1991; amended effective July 1, 1999.

General Authority: NDCC 25-03.2-10, 50-06-16

Law Implemented: NDCC 25-03.2

#### 75-03-20-05. Client census.

1. A daily census record must be maintained by the center. 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 will must be counted. The day of discharge will must be counted if payment is sought for that day. No payment may be sought from the department for

the day of discharge. No payment may be sought from the department for the rehabilitation portion of the rate for any day in which the resident was not in the facility.

2. The daily census records must include:
  - a. Identification of the client;
  - b. Entries for all days. Entries ~~cannot~~ may not be made just by exception; and
  - c. Identification of type of day, i.e., in-house or hospital day.

**History:** Effective December 1, 1991; amended effective July 1, 1999.

**General Authority:** NDCC 25-03.2-10, 50-06-16

**Law Implemented:** NDCC 25-03.2



**TITLE 92**

**Workers Compensation Bureau**



JANUARY 2000

CHAPTER 92-01-02

**92-01-02-27. Medical and hospital fees - Reimbursement for out-of-state and foreign medical providers methods.** Maximum medical and hospital fees paid by the bureau and rules of procedure including reimbursement for pharmaceuticals and durable medical equipment are contained in determined in accordance with the most current edition of the publication entitled "North Dakota Workers Compensation Bureau Medical and Hospital Fees"; adopted by reference and incorporated within this section as though set out in full ("Fee Schedules").

1. The fees adopted in this section apply to all services rendered on or after October 1, 1998.

2. Reimbursement for services and procedures not addressed within this section the fee schedules will be determined on a "by report" basis. A, in which case a description of the nature, extent and need for the procedure or service, including the time, skills, equipment, and any other pertinent facts necessary to furnish the procedure or service, must be provided to the bureau, with the following, where appropriate:

a. Postoperative diagnosis.

b. Size, location, and number of lesions or procedures.

c. Major surgical procedure with supplementary procedures.

d. Nearest similar procedure, by code, according to the North Dakota Workers Compensation Medical and Hospital Fees publication.

e. -- Estimated followup.

f. -- Operative time.

3. -- Inpatient hospital services must be paid on the basis of hospital-specific per-diem rates, based upon costs reported in the Medicare cost report available in 1989 for that hospital. Per-diem rates will be established for the following services, if available from the hospital: medical and surgical stays; intensive care unit and coronary care unit stays; psychiatric stays; chemical dependency stays; and rehabilitation stays. Specialty services will also be allocated a per-diem rate for a hospital performing that type of service (e.g., a burn unit stay). Per-diem rates will be calculated by aggregating salary expenses for routine services, allocated overhead (general services) costs and expenses for ancillary services, and dividing aggregation by related patient days. Expenses will be adjusted for each hospital to a common base of 1989, using adjustment factors specific to the regions in which hospitals are located.

4. -- Rates will be adjusted to 1998 values, using the same inflationary factors applied to adjusting North Dakota workers' compensation temporary disability payments. The maximum payable amount on an inpatient hospital charge will be computed by multiplying the eligible days or units reported on the hospital bill by the appropriate per-diem rate. Where the submitted amount is less than the approved amount, payment will be based on the lesser amount.

5. -- Hospital outpatient service charges, for outpatient clinic and emergency room services, will be based on a cost-to-charge ratio for each hospital. The cost-to-charge ratio will be computed by comparing the costs to charges for the hospital based on the Medicare audited cost report available in 1989. A maximum payable amount on an outpatient hospital charge will be computed by multiplying the submitted charge by the cost-to-charge ratio. If a Medicare cost report is not available for a hospital, the median cost-to-charge ratio for all eligible hospitals will be applied.

6. -- For an out-of-state medical provider, reimbursement is based on the reasonable and customary rate for the city where the medical provider is located. Medical providers who are not located in North Dakota, Minnesota, South Dakota, and Montana are out-of-state medical providers.

7. -- Foreign medical providers include those located in Canada and are to be reimbursed based on the reasonable and customary rates for that area if those rates can be established. If the information on which to establish those rates is not available, the medical provider will be reimbursed according to the North Dakota fee schedule. The amount of the

reimbursement--must--reflect--the-proper-exchange-rate-between  
the-United-States-dollar-and-the-foreign-currency-involved.

8.--For--Minnesota,--South--Dakota,--and--Montana--providers,--the  
following-rules-for-reimbursement-apply:

a.--Any-medical-provider-in-Minnesota-in-a-city-west-of-United  
States-highway-fifty-nine-and--north--of--Minnesota--state  
highway--twenty-eight--will-be-reimbursed-according-to-the  
North-Dakota--fee--schedule.---If--United--States--highway  
fifty-nine--or--Minnesota--state-highway-twenty-eight--runs  
through-the-city-where-the-medical--provider--is--located,  
the-North-Dakota-fee-schedule-applies.

b.--Any-medical-provider-in-Minnesota-in-a-city-east-of-United  
States-highway-fifty-nine--or--south--of--Minnesota--state  
highway--twenty-eight--is-an-out-of-state-medical-provider  
for-reimbursement-purposes.

c.--Any--medical-provider-in-South-Dakota-in-a-city-within-ten  
miles-of-the-North-Dakota-state-line--will--be--reimbursed  
according-to-the-North-Dakota-fee-schedule.

d.--Any--medical--provider--in--South-Dakota-in-a-city-further  
than-ten--miles--from--the--North--Dakota--state--line--is  
considered---an---out-of-state---medical---provider---for  
reimbursement-purposes.

e.--Any--medical--provider--in--Montana-in-a-city-within-forty  
miles-of-the-North-Dakota-state-line--will--be--reimbursed  
according-to-the-North-Dakota-fee-schedule.

f.--Any--medical--provider--in--Montana-in-a-city-further-than  
forty-miles-from-the-North-Dakota-state-line-is-considered  
an---out-of-state---medical---provider--for--reimbursement  
purposes.

**History:** Effective January 1, 1992; amended effective January 1, 1994;  
October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-08

**92-01-02-29. Medical services - Definitions.** The definitions  
found in North Dakota Century Code title 65 apply to terms contained in  
this title. In addition, unless the context otherwise requires, for  
purposes of sections 92-01-02-27 through 92-01-02-47 92-01-02-48:

1. "Appropriate--record"--means-a-legible-medical-record-or-report  
which-substantiates-the-nature--and--necessity--of--a--service  
being---billed--and--its--relationship--to--the--work--injury,  
including-the-level,-type,-and-extent-of-services-provided--to  
claimants.

- 2- "Attending doctor" means a doctor who is primarily responsible for the treatment of a claimant's compensable injury.
- 3- 2. "Bill audit" means the review of medical bills and associated medical records by the bureau or the managed care vendor, including review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, coding documentation in accordance with health care finance administration guidelines, coverage, ~~improper concurrent billing for services involving-evaluation and-treatment-of-work-related--and--non-work-related--problems for covered and noncovered services,~~ and application of fee schedules.
- 4- 3. "Case management" means the ongoing coordination of medical services provided to a claimant, including:
- a. Developing a treatment plan to provide appropriate medical services to a claimant.
  - b. Systematically monitoring the treatment rendered and the medical progress of the claimant.
  - c. Assessing whether alternative medical services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards.
  - d. Ensuring the claimant is following the prescribed medical plan.
  - e. Formulating a plan for keeping the claimant safely at work or expediting a safe return to work.
- 5- 4. "Concurrent review" means the monitoring by the bureau or the managed care vendor for medical necessity and appropriateness, throughout the period of time in which designated medical services are being provided to the claimant, of the claimant's condition, treatments, procedures, and length of stay.
- 6- 5. "Consulting doctor" means a licensed doctor who examines a claimant, or the claimant's medical record, at the request of the attending doctor to aid in diagnosis or treatment. A consulting doctor, at the request of the attending doctor, may provide specialized treatment of the compensable injury and give advice or an opinion regarding the treatment being rendered or considered for a claimant's injury.
- 7- ~~"Director"--means--the--director--of--the-workers-compensation bureau-or-the-director's-designated-representatives.~~
- 8- 6. "Elective surgery" means surgery that may be required in the process of recovery from an injury or illness but need not be

done as an emergency to preserve life, function, or health. Pain, of itself, does not constitute a surgical emergency.

- 9- 7. "Emergency" means ~~an injury or accident so severe it requires immediate surgery or services to preserve life, function, or health~~ a medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, to cause a prudent layperson possessing an average knowledge of health and medicine to reasonably conclude that immediate medical treatment is required to avoid serious impairment of a bodily function, or serious dysfunction of any body part, or jeopardizing the person's life.
- 10- 8. "Fee schedule" means the publication entitled "North Dakota workers compensation bureau medical and hospital fees publication which outlines the list of codes, service descriptions, and level of reimbursement Workers Compensation Bureau Medical and Hospital Fees".
9. "Functional capacity evaluation" means an objective, directly observed, measurement of a claimant's ability to perform a variety of physical tasks combined with subjective analyses of abilities by the claimant and the evaluator. A physical tolerance screening and a Blankenship's functional evaluation are functional capacity evaluations.
- 11- ~~"Inpatient stay" means one in which a claimant is admitted to a hospital prior to and extending past midnight for treatment and lodging which the doctor has not classified as an observation stay.~~
- 12- 10. "Managed care" means services performed by the bureau or a managed care vendor, including utilization review, preservice reviews, disability management services, case management services, ambulatory reviews, concurrent reviews, retrospective reviews, preadmission reviews, and medical bill audit.
- 13- 11. "Managed care vendor" means an organization that is retained by the bureau to provide managed care services.
- 14- 12. "Medical service" means a medical, surgical, chiropractic, psychological, dental, hospital, nursing, ambulance, and other related or ancillary service, including physical and occupational therapy and drugs, medicine, crutches, a prosthetic appliance, braces, and supports, and physical restoration and diagnostic services, or a service outlined in section 92-01-02-30.
- 15- 13. "Medical service provider" means a doctor, health care provider, hospital, medical clinic, or vendor of medical services.

- 16: 14. "Medically stationary" means the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached.
- 17: 15. "Notice of nonpayment" means the form by which a claimant is notified of charges denied by the bureau which are the claimant's personal responsibility.
- 18:--"Observation--stay"--means--a--hospital--stay--of--less--than forty-eight-hours-with-no-more-than--one--overnight--stay--and which-the-doctor-has-not-classified-as-an-inpatient-stay.
- 19:--"Outpatient--stay"--means--one--in--which--a--claimant--is-not admitted-to-a-hospital-prior-to-and--extending--past--midnight for--treatment--and--lodging;--Emergency--room--services; observation-stays;--or-short-stay-surgical-treatments-which--do not-result-in-admission-are-outpatient-services.
- 20: 16. "Palliative care" means a medical service rendered to alleviate symptoms without curing the underlying condition.
- 21:--"Peer--review"--means--a--case-by-case--review-of-services-for medical-necessity-and-appropriateness;--conducted-by--a--health care--provider-licensed-in-the-same-profession;--and-preferably in-the-same-specialty;--as--the--health--care--provider--whose services-are-being-reviewed.
- 22:--"Physical--capacity--evaluation"--means-an-objective;--directly observed;--measurement-of-a-claimant's--ability--to--perform--a variety-of-physical-tasks-combined-with-subjective-analyses-of abilities--by--the--claimant--and--the--evaluator;--Physical tolerance--screening;--Blankenship's-functional-evaluation;--and functional-capacity-assessment-are--the--same--as--a--physical capacity-evaluation.
- 23: 17. "Physical conditioning" means an individualized, graded exercise program designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the claimant prior to or in conjunction with the claimant's return to any level of work. Work conditioning is the same as physical conditioning.
- 24:--"Preadmission--review"--means-the-evaluation-by-a-managed-care vendor-of-a-proposed-hospital-admission-for-medical-necessity; appropriateness;--efficiency;--and-length-of-stay-prior-to-the-claimant-being-admitted.
- 25: 18. "Preservice review" means the evaluation by a managed care vendor of a proposed medical service for medical necessity, appropriateness, and efficiency prior to the services being performed.

- 26: 19. "Remittance advice" means the form used by the bureau to inform payees of the reasons for payment, reduction, or denial of medical services.
- 27: ~~--"Residual--functional--capacity"--means--a--claimant's--remaining--ability--to--perform--work--related--activities--despite--medically--determined--limitations--resulting--from--the--compensable--injury. A--residual--functional--capacity--evaluation--includes--capability--for--lifting,--carrying,--pushing,--pulling,--standing,--walking,--sitting,--climbing,--balancing,--steeping,--kneeling,--crouching,--crawling,--and--reaching.~~
- 28: 20. "Retrospective review" means a managed care vendor's review of a medical service for medical necessity, appropriateness, and efficiency after treatment has occurred.
- 29: 21. "Special report" means a ~~health--care--provider's~~ medical service provider's written response to a specific request from the bureau for information, including information on causation, aggravation, preexisting conditions, and clarification of complex medical conditions, requiring the creation of a new document or the previously unperformed analysis of existing data. The explanatory reports required for procedures designated as "by report" under section 92-01-02-27 are not special reports.
- 30: ~~--"Usual,--customary,--and--reasonable--fee"--means--a--fee--that--falls--within--the--range--of--fees--normally--charged--the--general--public--for--a--given--service.~~
- 31: 22. "Utilization review" means an evaluation of the necessity, appropriateness, efficiency, and quality of medical services provided to a claimant, based on medically accepted standards and an objective evaluation of the medical services.
- 32: ~~--"Work--capacity--evaluation"--means--a--physical--capacity--evaluation--with--special--emphasis--on--the--ability--to--perform--a--variety--of--vocationally--oriented--tasks--based--on--specific--job--demands.--Work--tolerance--screening--means--the--same--as--work--capacity--evaluation.~~
- 33: 23. "Work hardening" means an individualized, medically prescribed and monitored, work-oriented treatment process which involves the claimant participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the claimant to a specified job.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to ~~the--symptoms--and diagnosis;~~ the location of service, and ~~with-the-level-of-care provided;~~ is medically necessary; ~~--The-service-must-also-be if it is~~ widely accepted by the practicing peer group and ~~must be has been~~ determined to be safe and effective based on published, peer-reviewed, scientific studies.
2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the bureau. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.
3. The bureau will not authorize or pay for the following treatment:
  - a. Massage therapy except when provided by a licensed physical therapist, chiropractor, or medical doctor.
  - b. Thermography; chemonucleolysis; prolotherapy; acupuncture; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of botox; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).
  - c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking). Over-the-counter medications may be allowed in lieu of prescription medications when approved by the bureau and prescribed by the attending doctor. Dietary supplements including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.
  - d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, and gravity traction devices are not compensable ~~unless-a-need-is-clearly-justified-by-a-report that--establishes--that--the--"nature-of-the-injury-or-the process-of-recovery-requires"--that-the-item-be--furnished:~~

The report must specifically set forth why the claimant requires an item not usually considered necessary in the majority of claimants with similar impairments. If the bureau does not feel the report justifies the need for the item in the treatment and recovery of the claimant and the sole issue is whether the treatment is inappropriate, ineffective, excessive, or in violation of the rules regarding the performance of medical services, the issue shall be resolved under section 92-01-02-46 except at the discretion of the bureau under exceptional circumstances.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-29.2. Acceptance of rules and fees.** Medical service providers rendering treatment of any kind, regardless of the state or country where services are provided, including inpatient and outpatient services, to a claimant who comes under the bureau's jurisdiction must comply with managed care services under these rules. All providers shall cooperate with the bureau and the managed care vendor for its review services and shall provide, to the bureau or the managed care vendor, without additional charge ~~to the bureau or the managed care vendor~~, the medical information requested by the managed care vendor in relation to the reviewed service. Review services include concurrent reviews, preadmission reviews, preservice reviews, and retrospective reviews.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

#### **92-01-02-30. Medical services.**

##### **1. Medical services.**

- a. Medical services that are not medically necessary are not reimbursable.
- b. Frequency and extent of treatment may not be more than the nature of the injury or process of recovery requires, and must be provided in accordance with utilization and treatment standards as prescribed by the bureau, or the managed care vendor. The bureau may require evidence of the efficacy of treatment.

##### **2. Chiropractic services.---Chiropractic Medical services may be reimbursed only when provided according to a written treatment plan that must include objectives, modalities, frequency of**

treatment, and duration. A copy of the treatment plan, signed by the attending doctor medical service provider, must be provided to the bureau within fourteen days of beginning the treatment or within fourteen days of learning that the treatment is claimed to be work-related, whichever occurs later. However, a treatment plan is not required for a short course of treatment consisting of one or two visits.

3. ~~Ancillary services---Ancillary services---including physical therapy or occupational therapy by a medical service provider other than the attending doctor may be reimbursed only when provided according to a written order prescribed prior to beginning treatment and signed by the attending doctor within fourteen days of the beginning of treatment or within fourteen days of learning that the treatment is claimed to be work-related, whichever occurs later.~~ For purposes of this section, a treatment plan must include:
- a. Objectives -, including the degree of restoration anticipated.
  - b. Measurable goals.
  - c. Modalities and specific therapies to be used.
  - d. Frequency and duration of treatments to be provided.
  - e. Condition of the claimant which may require periodic modification in of the plan of care based on:
    - (1) Improvements in the claimant's status.
    - (2) Failure of the claimant to improve as expected.
    - (3) Intervention of care rendered, including education of the claimant, when appropriate.
    - (4) Specific operative reports, test results, and consultation reports.
4. The cost of preparing a written treatment plan and supplying progress notes under this section are is included in the fee for the medical service.
5. The treatment plan requirements of this section may be modified or waived by the bureau.
6. X-ray films must be of diagnostic quality. Billings for x-rays are not reimbursable without a report of the findings. Upon request of either the bureau or the managed care vendor, original x-ray films must be forwarded to the bureau or the managed care vendor. Films must be returned to the vendor. A

reasonable charge may be made for the costs of delivery of films.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-31. Who may treat be reimbursed.**

1. Only treatment that falls within the scope and field of the treating ~~health-care-provider's~~ medical service provider's license to practice is reimbursable.
2. Paraprofessionals, who are not independently licensed, must practice under the direct supervision of a licensed ~~health care-provider~~ medical service provider whose scope of practice and specialty training includes the service provided by the paraprofessional, in order to be reimbursed.
3. Health care providers may be refused ~~permission~~ reimbursement to treat cases under the jurisdiction of the bureau.
4. Reasons for holding a ~~health-care-provider~~ medical service provider ineligible ~~to--treat--claimants~~ for reimbursement include one or more of the following:
  - a. Failure, neglect, or refusal to submit complete, adequate, and detailed reports.
  - b. Failure, neglect, or refusal to respond to requests by the bureau for additional reports.
  - c. Failure, neglect, or refusal to observe and comply with the bureau's orders and medical service rules, including cooperation with the bureau's managed care ~~vendor~~ vendors.
  - d. Failure to notify the bureau immediately and prior to burial in any death where the cause of death is not definitely known or where there is question of whether death resulted from a compensable injury.
  - e. Failure to recognize emotional and social factors impeding recovery of claimants.
  - f. Unreasonable refusal to comply with the recommendations of board-certified or qualified specialists who have examined the claimant.
  - g. Submission of false or misleading reports to the bureau.

- h. Collusion with other persons in submission of false or misleading information to the bureau.
- i. ~~Submission~~ Pattern of submission of inaccurate or misleading bills.
- j. ~~Submission~~ Pattern of submission of false or erroneous diagnosis.
- k. Knowingly submitting bills to a claimant for treatment of a work-related condition for which the bureau has accepted liability, charging or attempting to charge claimants fees in addition to the fee paid by the bureau for care of the occupational injury, or billing the difference between the maximum allowable fee set forth in the bureau's fee schedule and usual and customary charges.
- l. Failure to include physical conditioning in the treatment plan. The medical service provider should determine the claimant's activity level, ascertain barriers specific to the claimant, and provide information on the role of physical activity in injury management.
- m. Failure to include the injured worker's functional abilities in addressing return-to-work options during the recovery phase.

Use of:

- {1} n. ~~Treatment of--a~~ that is controversial, experimental, or investigative nature:
- {2}--~~Contraindicated;~~ which is contraindicated or hazardous treatment-measures.
- {3}--~~Unreasonable----~~and; which is unreasonable or inappropriate treatment---of----the----work-related condition.
- {4}--~~Nonspecific-treatment-measures.~~
- {5}--~~Treatment--yielding~~ for the work injury; or which yields unsatisfactory results.
- {6} o. Certifying disability in excess of the actual medical limitations of the claimant ~~or-provider.~~
- m= p. Conviction in any court of any offense involving moral turpitude, in which case the record of the conviction is conclusive evidence.

- n= q. The excessive use, or excessive or inappropriate prescription for use, of narcotic, addictive, habituating, or dependency inducing drugs.
- o= r. Declaration of mental ~~incompetency~~ incompetence by a court of competent jurisdiction.
- p= s. Disciplinary action by a licensing board.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-32. Physician assistant and nurse practitioner rules.**

1. Physician assistants and nurse practitioners may perform ~~medical services in occupational injury cases~~ be reimbursed within the scope of their licenses for services performed under the control and supervision of a licensed physician that are required by their licensure. ~~Such control and supervision may not be construed to require the personal presence of the supervising physician.~~
2. ~~Physician assistants and nurse practitioners may perform only those medical services that are within the scope of their license or certification for occupational injury cases and those services must be performed within the limitations listed in the following subsection:~~
3. To be eligible to treat occupational injuries, the physician assistant or nurse practitioner must provide the bureau with upon request:
  - a. A copy of the person's license ~~or certification;~~
  - b. The name, address, and specialty of the person's supervising physician; and
  - c. Evidence of a reliable and rapid system of communication with the supervising physician.
- 4= 3. The bureau must be notified of any change in supervising physician.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

92-01-02-33. Utilization review and quality assurance. The bureau has instituted a program of utilization review and quality assurance to monitor and control the use of health care services.

1. Prior authorization for services must be obtained from the bureau or its managed care vendor at least twenty-four hours or the next business day in advance of providing certain medical treatment, equipment, or supplies. Medical services requiring prior authorization or preservice review are outlined in section 92-01-02-34. Emergency medical services may be provided without prior authorization, but notification is required within twenty-four hours of, or by the end of the next business day following, initiation of emergency treatment. Reimbursement may be withheld, or recovery of prior payments made, if utilization review does not confirm the medical necessity of emergency medical services.
2. Documentation of the need for and efficacy of continued medical care by the ~~health-care-provider~~ medical service provider is required at ~~regular-intervals~~ the direction or request of the bureau or the managed care vendor while a claim is open.
3. The bureau may require second opinion consultations prior to the authorization of reimbursement for ~~some-types-of~~ surgery of ~~uncommon-nature~~ and for conservative care which extends past ~~one-hundred-twenty~~ sixty days following the initial visit.
4. ~~Hospitalization will be reimbursed only when it is determined to be medically necessary for the diagnosis and healing or rehabilitative treatment of accepted conditions. Hospital bills and supporting medical documents may be audited to verify the accuracy or appropriateness of charges, and recovery of overpayment will be made.~~
5. ~~The bureau's outpatient surgery program requires that certain diagnostic and surgical procedures be reimbursed only if they are performed in an outpatient setting; however, if a worker's medical condition necessitates performance of the procedure in an inpatient setting, preservice review must be obtained from the bureau's managed care vendor.~~

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.

1. Certain treatment procedures require prior authorization or preservice review by the bureau or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; ICD-9-CM codes; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, procedure codes and expected prognosis.
2. Requesting prior authorization or preservice review is the responsibility of the health-care medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.
3. Health-care Medical service providers shall request prior authorization directly from the bureau rather than through the managed care vendor for: the items listed in this subsection. The bureau shall respond to requests within thirty days.

a. ~~Diagnostic--or--therapeutic-injection--Epidural--or--caudal injection--of--substances--other--than--anesthetic--or--contrast solution--may--be--authorized--only--under--the--following conditions:~~

~~(1)--When--the--claimant--has--experienced--acute--low--back--pain or--acute--exacerbation--of--chronic--low--back--pain--of--not more--than--six--months--duration:~~

~~(2)--When--the--claimant--will--receive--no--more--than--three injections--in--an--initial--thirty--day--period;--followed by--a--thirty--day--evaluation--period;--If--significant pain--relief--is--demonstrated;--one--additional--series--of three--injections--may--be--authorized;--No--more--than--six injections--may--be--authorized--per--acute--episode.~~  
Therapeutic injections. Therapeutic injections such as trigger point injections, facet joint injections, facet nerve block, sympathetic nerve block, epidurals, nerve root blocks, and peripheral nerve blocks can only be given to the anatomical sites of a compensable work injury. Prior to the first injections, the medical service provider shall submit a treatment plan outlining the medical necessity for injections, other active modalities, and instructions for an injured worker's home exercise treatment plan. The injections are to be given in conjunction with other active treatment modalities.

A maximum of three injections per visit will be reimbursable. A maximum of four injections per site will be allowed on an approved treatment plan, followed by an assessment period of two months, during which no injections will be allowed. The medical service provider

shall submit a written treatment plan if additional injections are requested.

b. Home nursing or convalescent center care. When the attending doctor believes special or attendant (home nurse) care is needed the following information must be submitted:

- (1) A description of the care required including estimated time required (i.e., catheterization, three times per day, thirty minutes; bathing, two times per day, one hour; toilet transfers as needed; dressing change, four times per day, two hours).
- (2) The skill level or special training required to administer care (i.e., R.N.; L.P.N.; family member who has received special training; or no special training required).
- (3) If known, the name and address of a person or facility willing to provide care.
- (4) The length of time special or home nursing care will be required.

Approval of fees for home nurse or attendant care is negotiable based upon the care provided and the level of training of the provider. The bureau may authorize and pay for visiting nurse care needed to evaluate or instruct a home health--care medical service provider. When the claimant or the claimant's family makes arrangements for caregivers, reimbursement will be issued directly to the claimant. The claimant is responsible for reimbursing the home nursing care provider. Payment to individuals for services pursuant to this rule does not constitute an employer and employee relationship between the bureau and the individual.

c. Durable medical equipment.

- (1) The bureau will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The bureau shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the bureau. If the equipment is needed on a long-term basis, the bureau may purchase the equipment. The bureau shall base its decision to purchase the equipment on a

comparison of the projected rental costs of the equipment to its purchase price. The bureau shall purchase the equipment from the most cost-efficient source.

(2) The bureau will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the bureau will reimburse the doctor or the provider ~~the actual cost for the item. In addition, a handling fee, not to exceed ten percent of the wholesale cost of the item, will be paid~~ pursuant to its fee schedule. Providers and doctors shall supply the bureau with a copy of their original invoice showing actual cost of the item upon request of the bureau. The bureau will repair or replace originally provided damaged, broken, or wornout prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.

(3) Equipment costing less than one hundred dollars does not requiring require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics ~~of minimal cost. Personal appliances such as vibrators, heating pads, home furnishings, hot tubs, waterbeds, exercise equipment, Jacuzzis, and similar appliances, will not be authorized or paid unless the bureau orders otherwise.~~

d. ~~Injections of anesthetic or anti-inflammatory agents into the vertebral facet joints. These injections will be authorized to qualified specialists in orthopedics, neurology, and anesthesia, or other doctors who can demonstrate expertise in the procedure and who can provide certification that their facility privileges include the procedure requested. The following conditions must be met:~~

~~(1) Rationale for procedure, treatment plan, and request for authorization must be presented in writing to the bureau;~~

~~(2) Procedure must be performed in an accredited facility under radiographic control; and~~

~~(3) Not more than four facet injection procedures will be authorized in any one patient.~~

e. ~~Intramuscular and trigger point injections of steroids and other non-scheduled medications beyond the first three injections per patient regardless of location or change in condition. These injections are limited to a series of three injections in each location per patient. The attending doctor must submit justification for an additional series of three injections if indicated with a maximum of six injections to be authorized per acute episode.~~

f. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.

g. e. Concurrent care. In some cases, treatment by more than one ~~practitioner~~ medical service provider may be allowed. The bureau will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the bureau with the name, address, discipline, and specialty of all other ~~practitioners~~ medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the bureau will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved ~~practitioners~~ medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The bureau will approve concurrent care on a case-by-case basis. The managed care vendor must be notified of all requests for concurrent care. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

4. Notwithstanding the requirements of this subsection, the bureau may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers. ~~Health-care~~ Medical service providers shall request preservice review from the managed care vendor for:

a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery, inpatient physical therapy, and outpatient surgical procedures.

b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the managed care vendor actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the bureau or the managed care vendor may require an independent consultation with a doctor of the bureau's choice. The bureau shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the bureau shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the bureau may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the bureau believes the proposed surgery is excessive, inappropriate, or ineffective and the bureau cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46. An attending doctor or health care provider who proceeds to perform elective surgery and fails to comply with the notice requirements of this rule may not be reimbursed for the services and may not request retrospective review of those services unless the attending doctor or health care provider can prove, by a preponderance of the evidence, that the claimant did not inform the provider the condition was covered under workers' compensation. If after reviewing the evidence, the bureau denies retrospective review, the health care provider may request binding dispute resolution in accordance with section 92-01-02-46. Surgery that must be performed promptly, i.e., within twenty-four hours, because the condition is life-threatening or there is rapidly progressing deterioration without surgical intervention, is not considered elective surgery. In such cases, the attending doctor should endeavor to notify the managed care vendor of the need for emergency surgery. Elective surgery unrelated to the compensable injury may be permitted through prior agreement and approval by the bureau provided the unrelated surgery is not more extensive than the procedure for the compensable injury. The requesting doctor must submit a written request and identify which services are needed due to the compensable injury and which are needed due to the unrelated conditions, along with an estimate of what effect, if any, the unrelated

~~surgery will have on the compensable injury and recovery time from surgery. The bureau may not reimburse charges associated with the unrelated procedure unless otherwise approved by the bureau.~~

- c. All imaging procedures including CAT scan, magnetic resonance imaging, myelogram, and discogram. Tomograms, bonescans, and EMGs are reviewable subject to preservice review if requested in conjunction with one of the above imaging procedures. The bureau may waive preservice review requirements for these procedures when requested by a physician who is performing an independent medical examination or permanent partial impairment evaluation at the request of the bureau.
  - d. Physical therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first. The bureau may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
  - e. Chiropractic treatment beyond the first ~~eighteen~~ twelve treatments or beyond ~~ninety~~ sixty days after the injury, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The bureau may waive this subdivision in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
5. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.
  6. Hospitalization will be paid when medically necessary for treatment of the compensable injury. Unless the claimant's condition requires special care, ward or semiprivate accommodations will be paid. When the claimant's condition requires special nurses, a private room, or intensive care, the attending doctor may order these services subject to documentation supporting this need. Hospitalization solely for physical therapy, bed rest, or administration of injectable drugs will be paid only when admission has been recommended as approved by the managed care vendor. Discharge from the hospital must be at the earliest date possible consistent with proper health care. If transfer to a convalescent center or nursing home is indicated, prior arrangements should be made with the bureau or the managed care vendor. The bureau may designate diagnostic and surgical procedures that will be reimbursed only if performed in an outpatient setting when outpatient services are reasonably available and accessible to the claimant. When procedures so designated must be performed in an inpatient setting for

reasons of medical necessity, preservice review must be obtained through the managed care vendor. ~~Medical equipment, supplies, or hardware will be reimbursed at the actual cost of the item. In addition, a handling fee of ten percent of the actual cost will be paid. Upon request of the bureau, the hospital must supply a copy of its original invoice showing the actual cost of the item.~~

7. The bureau may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.
8. The managed care vendor must respond orally to the health-care medical service provider and the bureau within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service. Within that time the managed care vendor must either recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial. The managed care vendor must respond to the bureau in writing to each request for preservice review of medical services within seven days of receiving the necessary information to complete a review and make a recommendation.
9. Retrospective review is limited to those situations where the provider can prove, through a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not in fact know, that the condition was, or likely would be, covered under workers' compensation. All health-care medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the bureau or the managed care vendor, the medical information requested by the managed care vendor in relation to the reviewed service.
10. The bureau must notify provider associations of the review requirements of this section prior to the effective date of these rules.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

#### **92-01-02-38. Changes of doctors.**

1. All changes from one doctor to another must be approved by the bureau. Normally, changes will be allowed only after the

claimant has been under the care of the attending doctor for sufficient time for the doctor to complete necessary diagnostic studies, establish an appropriate treatment regimen, and evaluate the efficacy of the therapeutic program.

2. North Dakota Century Code section 65-05-28 governs choice of doctor. For purposes of this rule, the following are not considered changes of doctor by the claimant:
  - a. Emergency services by a doctor;
  - b. Examinations at the request of the bureau;
  - c. Consultations or referrals initiated by the attending doctor;
  - d. Referrals to radiologists and pathologists for diagnostic studies;
  - e. When claimants are required to change doctors to receive compensable medical services, palliative care or time loss authorization because their health care provider is no longer qualified as an attending doctor; or
  - f. Changes of attending doctor required due to conditions beyond the claimant's control. This would include when the doctor terminates practice or leaves the area.
3. The claimant must be advised when and why a change is denied. The bureau reserves the right to require a claimant to select another doctor or specialist for treatment:
  - a. When more conveniently located doctors, qualified to provide the necessary treatment, are available;
  - b. When the attending doctor fails to observe or comply with the bureau's rules;
  - c. When, in a time loss case, reasonable progress toward return to work is not shown;
  - d. When a claimant requires specialized treatment, which the attending doctor is not qualified to render, or which is outside the scope of the attending doctor's license to practice; or
  - e. When the attending doctor is not qualified to treat each of several accepted conditions. This does not preclude concurrent care where when indicated as outlined in section ~~92-01-02-37~~ 92-01-02-34.
4. When the bureau finds the change of doctor to be appropriate and has requested the claimant to change under this rule, the

bureau may select a new attending doctor if the claimant unreasonably refuses or delays in selecting another attending doctor.

5. The bureau in its discretion may authorize a change when it finds that a change is in the best interest of returning the claimant to a productive role in society.

**History:** Effective January 1, 1994; amended effective April 1, 1997; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-45.1. Provider responsibilities and billings.**

1. A provider may not submit a charge for a service which exceeds the amount the provider charges for the same service in cases unrelated to workers' compensation injuries.
2. All bills must be fully itemized, including ICD-9-CM codes, and services must be identified by code numbers and descriptions found in the fee schedules or as provided in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as provided in the fee schedules or in these rules.
3. All ~~health-care~~ medical service providers shall submit bills referring to one claim only for medical services on current form UB 92 or form HCFA 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms. Bills and reports must include:
  - a. The claimant's full name and address;
  - b. The claimant's claim number and social security number;
  - c. Date and nature of injury;
  - d. Area of body treated, including ICD-9-CM code identifying right or left, as appropriate;
  - e. Date of service;
  - f. Name and address of facility where the service was rendered;
  - g. Name of ~~practitioner~~ medical service provider providing the service;
  - h. Physician's or supplier's billing name, address, zip code, phone number; physician's unique physician identification

number (UPIN); physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; advanced practice registered nurse's UPIN or North Dakota state license number;

- i. Referring or ordering physician's UPIN;
  - j. Type of service;
  - k. Appropriate procedure code or hospital revenue code;
  - l. Description of service;
  - m. Charge for each service;
  - n. Units of service;
  - o. If dental, tooth numbers;
  - p. Total bill charge;
  - q. Name of ~~practitioner~~ medical service provider providing service along with the provider's tax identification number; and
  - r. Date of bills.
4. All records submitted by providers, including notes, except those provided by an emergency room physician and those on forms provided by the bureau, must be typed to ensure that they are legible and reproducible. Copies of office or progress notes are required for all followup visits. Office notes are not acceptable in lieu of requested narrative reports. Communications may not refer to more than one claim.
5. Providers shall submit with each bill a copy of ~~appropriate records to document the nature and necessity of the service or~~ charge medical records or reports which substantiate the nature and necessity of a service being billed and its relationship to the work injury, including the level, type, and extent of the service provided to claimants. Documentation required includes:
- a. Laboratory and pathology reports;
  - b. X-ray findings;
  - c. Operative reports;
  - d. Office notes, physical therapy, and occupational therapy progress notes;

- e. Consultation reports;
  - f. History, physical examination, and discharge summaries;
  - g. Special diagnostic study reports; and
  - h. Special or other requested narrative reports.
6. When a provider submits a bill to the bureau for medical services, the provider shall submit a copy of the bill to the claimant to whom the services were provided. The copy must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the claimant.
7. If the provider does not submit records with a bill, and still does not provide those records upon request of the bureau, the charges for which records were not supplied may not be paid by the bureau, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.
8. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment rendered to that claimant unless the payment for the treatment was denied because:
- a. The claimant sought treatment from that provider for conditions not related to the compensable injury or illness.
  - b. The claimant sought treatment from that provider which was not prescribed by the claimant's attending doctor. This includes ongoing treatment by the provider who is a nonattending doctor.
  - c. The claimant sought palliative care from that provider not compensable under section 92-01-02-40; after the claimant was provided notice that the palliative care service is not compensable.
  - d. The claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.
  - e. The claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of

the work injury from the provider requesting payment for that treatment.

- f. The claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.
9. A health-care medical service provider may not bill for services not provided to a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.
10. Pursuant to North Dakota Century Code section 65-05-33, a health-care medical service provider may not submit false or fraudulent billings.
11. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.
12. When a claimant is seen initially in an emergency department and is admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission are part of the inpatient treatment.
13. Physician assistant or nurse practitioner fees will be paid at the rate of eighty percent of a doctor's fee for a comparable service. The bills for these services must be marked with the modifier NP.
14. A physical medicine modality or manipulation, when applied to two or more areas at one visit, is reimbursed at one hundred percent of the maximum allowable fee for the first area treated, fifty percent for the second area treated, and twenty-five percent for all subsequent areas treated.
15. When ultrasound, diathermy, microwave, infrared, and hot packs are used in combinations of two or more during one treatment session, only one may be reimbursed, unless two separate effects are demonstrated.
16. When multiple areas are examined using CAT scan or magnetic resonance imaging, the first area examined ~~must~~ will be reimbursed at ~~one-hundred-percent~~ the allowable fee schedule amount, the second area at fifty percent, and all subsequent areas at twenty-five percent of the allowable fee schedule amount.
17. When a health-care medical service provider is asked to review records or reports prepared by another health-care medical service provider, the provider shall bill review of the

records using CPT code 99080 with a descriptor of "record review". The billing must include the actual time spent reviewing the records or reports and must list the ~~health-care~~ medical service provider's normal hourly rate for the review.

18. When there is a dispute over the amount of a bill or the necessity of services rendered, the bureau shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code.
19. If medical documentation outlines that a non-work-related condition is being treated concurrently with the compensable injury and that condition has no effect on the compensable injury, the bureau may reduce the charges submitted for treatment. In addition, the attending doctor must notify the bureau immediately and submit:
  - a. A description or diagnosis of the non-work-related condition.
  - b. A description of the treatment being rendered.
  - c. The effect, if any, of the non-work-related condition on the compensable injury.

The attending doctor shall include a thorough explanation of how the non-work-related condition affects the compensable injury when the doctor requests authorization to treat the non-work-related condition. Temporary treatment of a non-work-related condition may be allowed, upon prior approval by the bureau, provided the condition directly delays recovery of the compensable injury. The bureau may not approve or pay for treatment for a known preexisting non-work-related condition for which the claimant was receiving treatment prior to the occurrence of the compensable injury, which is not delaying recovery of the compensable injury. The bureau may not pay for treatment of a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of a non-work-related condition is being rendered, the attending doctor shall submit reports monthly outlining the effect of treatment on both the non-work-related condition and the compensable injury.

20. In cases of questionable liability ~~where~~ when the bureau has not rendered a decision on compensability, the provider has billed the claimant or other insurance, and the claim is subsequently allowed, the provider shall refund the claimant or other insurer in full and bill the bureau for services rendered.
21. The bureau may not pay for the cost of duplicating records when covering the treatment received by the claimant. If the bureau requests records in addition to those listed in

subsection 5 or records prior to the date of injury, the bureau shall pay a minimum charge of five dollars for five or fewer pages and the minimum charge of five dollars for the first five pages plus thirty-five cents per page for every page after the first five pages.

22. The provider shall assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes will be returned to the provider.
23. Billing codes must be found in the most recent edition of the physician's current procedural terminology; health care financing administration common procedure coding system; code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.
24. A provider shall comply within thirty calendar days with the bureau's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the bureau's determination of compensability, medical necessity, or excessiveness or the bureau may refuse payment for services provided by that provider.

**History:** Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07, 65-05-28.2

#### **92-01-02-46. Medical services disputes.**

1. This rule provides the procedures followed for managed care disputes. Restrospective review is the procedure provided for disputing the denial of payment for a medical service charge based on failure to request prior authorization or preservice review. Binding dispute resolution is the procedure provided for disputing managed care recommendations, including palliative care recommendations and bill audit and review. Disputes not arising from managed care follow the reconsideration and hearing procedures provided by North Dakota Century Code sections 65-01-16 and 65-02-15.
2. When the bureau denies payment for a medical service charge because the provider did not properly request prior authorization or preservice review for that service, the provider may request a retrospective review of that service. Requests for retrospective review must be made in writing, within thirty days after the notice that payment for the service is denied, addressed to the bureau claims analyst assigned to handle the claimant's claim. Requests for

retrospective review should not be sent to the managed care vendor. The request must contain:

- a. The claimant's name.
- b. The claim number.
- c. The date of service.
- d. A statement of why the provider did not know and should not have known that the injury or condition may be a compensable injury.
- e. The information required to perform a preservice review or prior authorization of the service.

If the provider knew or should have known that the patient may have a compensable work injury when the medical services for that injury were provided, the request for retrospective review must be denied. If the provider did not know and should not have known that the patient may have a compensable work injury when the medical services for that injury were provided, a retrospective preservice review or preauthorization must be done in accordance with this chapter. If the bureau continues to deny payment for the service, the provider may request binding dispute resolution under this rule.

3. A party who wishes to dispute a recommendation of a utilization review managed care vendor first shall exhaust any internal dispute resolution procedures provided by the managed care vendor. A party who wishes to dispute a final recommendation of a managed care vendor or a prior authorization or preservice review decision under section 92-01-02-34 shall file a written request for binding dispute resolution with the bureau within thirty days after the final recommendation or decision. The request must contain:
  - a. The claimant's name.
  - b. The claim number.
  - c. All relevant medical information and documentation.
  - d. A statement of any actual or potential harm to the claimant from the recommendation.
  - e. The specific relief sought.
4. A party who wishes to dispute a denial or reduction of a service charge arising from bill audit and review must file a written request for binding dispute resolution with the bureau within thirty days after the date of the bureau's remittance

advice reducing or denying the charge. The request must contain:

- a. The claimant's name.
  - b. The claim number.
  - c. The specific code and the date of the service in dispute.
  - d. A statement of the reasons the reduction or denial was incorrect, with any supporting documentation.
  - e. The specific relief sought.
5. The bureau shall review the request for binding dispute resolution and the relevant information in the record. The bureau may request additional information or documentation. If a party does not provide the requested information within fourteen days, the bureau may decide the dispute on the information in the record.
6. The bureau may request review by health-care medical service providers, at least one of whom must be licensed or certified in the same profession as the health-care medical service provider whose treatment is being reviewed, or by an external expert in medical coding or other aspects of medical treatment or billing, to assist with its review of the request. The bureau may request an independent medical examination to assist with its review of a request.
7. At the conclusion of its review, the bureau shall issue its binding decision. The bureau shall issue its decision by letter or notice, or for a decision that is reviewable by law, the bureau may issue its decision in an administrative order instead of a letter or notice.

**History:** Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08, 65-02-20

**Law Implemented:** NDCC 65-02-20

**92-01-02-47. Providers performing peer review.**

~~1. In consultation with the workers compensation bureau's health care advisory board, the bureau shall establish and maintain a list of doctors and health care providers or panel of health care providers and doctors, to review medical services disputes.~~

~~2. Doctors and health care providers, and panels of doctors and health care providers, will be selected by the bureau. To be eligible to receive reimbursement for treating claimants, all~~

North--Dakota--doctors--and--health--care--providers--must--be available--for--peer--review--upon--the--request--of--the--bureau; Hospitals--are--not--subject--to--peer--review;--however, professional--services--provided--by--a--health--care--provider--in--a hospital--setting--are--subject--to--peer--review;--Peer--review members--may--not--include--any--health--care--providers--or--doctors whose--examination--or--treatment--is--the--subject--of--the--review, or--any--health--care--provider--whose--license--is--under--suspension by--the--provider's--licensing--board.

3.--Doctors--and--health--care--providers--performing--peer--review--and acting--pursuant--to--the--authority--of--the--bureau--are--agents--of the--department.--The--findings--of--those--performing--peer--review, all--of--the--records--and--communications--to--or--before--the reviewers--are--privileged--and--are--not--discoverable--or admissible--in--any--proceeding--other--than--those--under--this chapter.

4.--Any--person--performing--binding--dispute--resolution--under--these rules--is--immune--from--civil--liability--pursuant--to--North--Dakota Century--Code--section--65-02-20--if--that--person--acts--in--good faith,--without--malice,--and--not--for--improper--personal enrichment.

5.--When--a--claimant--is--required--to--attend--an--examination--pursuant to--section--92-01-02-46,--the--bureau--shall--send--notice--of--the examination--to--the--claimant--and--all--affected--parties.--The notice--must--inform--all--parties--of--the--time,--date,--location, and--purpose--of--the--examination.

6.--Those--performing--peer--review--pursuant--to--this--rule--must--be paid--as--follows:

a.--The--bureau--shall--pay--a--health--care--provider,--other--than--a doctor,--seventy-five--dollars,--to--be--billed--under--North Dakota--specific--code--BDR01,--for--record--review--and examination.--In--addition,--the--bureau--will--pay--twenty-five dollars--for--the--report,--to--be--billed--under--North--Dakota specific--code--BDR02.--If--the--bureau--has--requested--a--review by--a--panel--of--providers,--the--bureau--will--pay--the--provider preparing--the--report--twenty-five--dollars--for--report preparation.--The--panel--members--shall--bill--under--North Dakota--specific--code--BDR05--and--the--report--must--be--billed under--North--Dakota--specific--code--BDR06.

b.--The--bureau--shall--pay--a--doctor--selected--pursuant--to--section 92-01-02-46--to--review--records,--review--treatment,--perform reasonable--and--appropriate--tests,--or--examine--the--claimant, one--hundred--fifty--dollars--per--hour--up--to--a--maximum--of--four hours.--A--doctor--will--also--receive--one--hundred--dollars--for preparation--and--submission--of--the--report.--Billings--for services--by--a--single--doctor--must--be--billed--under--North Dakota--specific--code--BDR03--for--the--examination--and--BDR04

for the report; Billings by a doctor selected to a panel must be billed under North Dakota specific code BDR07 for the examination and BDR08 for the report of the panel;

e. Notwithstanding the provisions of this subsection, the bureau may preauthorize additional fees of up to two hundred dollars above the amounts specified in a complex case requiring extensive review. Billings for that additional amount must be billed under North Dakota specific code BDR09.

7. The bureau shall pay costs related to record review, examinations, and reports pursuant to this rule and shall charge the costs to the appropriate claim file. If additional diagnostic tests are required, the costs for these tests will be reimbursed according to the North Dakota fee schedules. The bureau also shall pay the claimant for travel according to North Dakota Century Code section 65-05-28.

8. If the claimant fails to appear for a required examination under this section, without providing the doctor with at least twenty-four hours' notice, the bureau shall pay each selected doctor one hundred dollars. Doctors shall bill cancellations in these circumstances under North Dakota specific code BDR10.  
Repealed effective March 1, 2000.

History: Effective January 1, 1994; amended effective April 1, 1997.  
General Authority: NDCG-65-02-08; -65-02-20; -65-05-07  
Law Implemented: NDCG-65-02-20; -65-05-07

#### 92-01-02-48. Elements of filing.

1. For purposes of this section, unless the context otherwise requires:
  - a. "Appropriate record" means a legible medical record or report from a provider, or any other relevant and material information, substantiating the type, nature, extent, and work-relatedness of an injury, which is adequate to verify the level, type, and extent of services provided.
  - b. "Bill" means a provider's statement of charges and services rendered for treatment of a work-related injury.
  - c. "Bill review" means the review or audit of medical bills and any associated medical records by a contractor for the North Dakota workers compensation bureau and may include review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, and improper concurrent bills for services involving evaluation or treatment of work-related and non-work-related problems.

- d. "Wage verification" means federal and state income tax returns; W-2 forms; daily, weekly, biweekly, semimonthly, or monthly employer payroll statements; and income statements prepared in accordance with generally accepted accounting practices.
2. The elements of filing for an application for workers' compensation benefits are satisfied when the bureau has received:
    - a. The C1 form completed and signed by the employee;
    - b. The C2 form completed and signed by the employer or the employer's report is deemed admitted pursuant to North Dakota Century Code section 65-01-16;
    - c. The C3 form or other appropriate record completed and signed by the provider;
    - d. Wage verification as requested by the bureau, if disability benefits are claimed; and
    - e. Appropriate records from the provider necessary to determine the type, nature, extent, and potential work-relatedness of the injury or disability.
  3. The elements of filing for a reapplication are satisfied when the bureau is in receipt of:
    - a. The C4 form or other correspondence requesting benefits signed by the employee;
    - b. Wage verification as requested by the bureau, if disability benefits are claimed; and
    - c. Appropriate records from the provider.
  4. The elements of filing for payment of a medical bill are satisfied when a bill review is completed and after the bureau has received:
    - a. A bill from the provider or employee; and
    - b. Appropriate records from the provider or employee.
  5. If the bureau requests additional information from the employee needed to process a reapplication and the employee does not provide the information, elements of filing are not satisfied until the employee provides the requested information.

6. The bureau may waive elements of filing in conjunction with programs established for the expedited processing of selected claims.

**History:** Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997; February 1, 1998; January 1, 2000.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-08