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April 2008

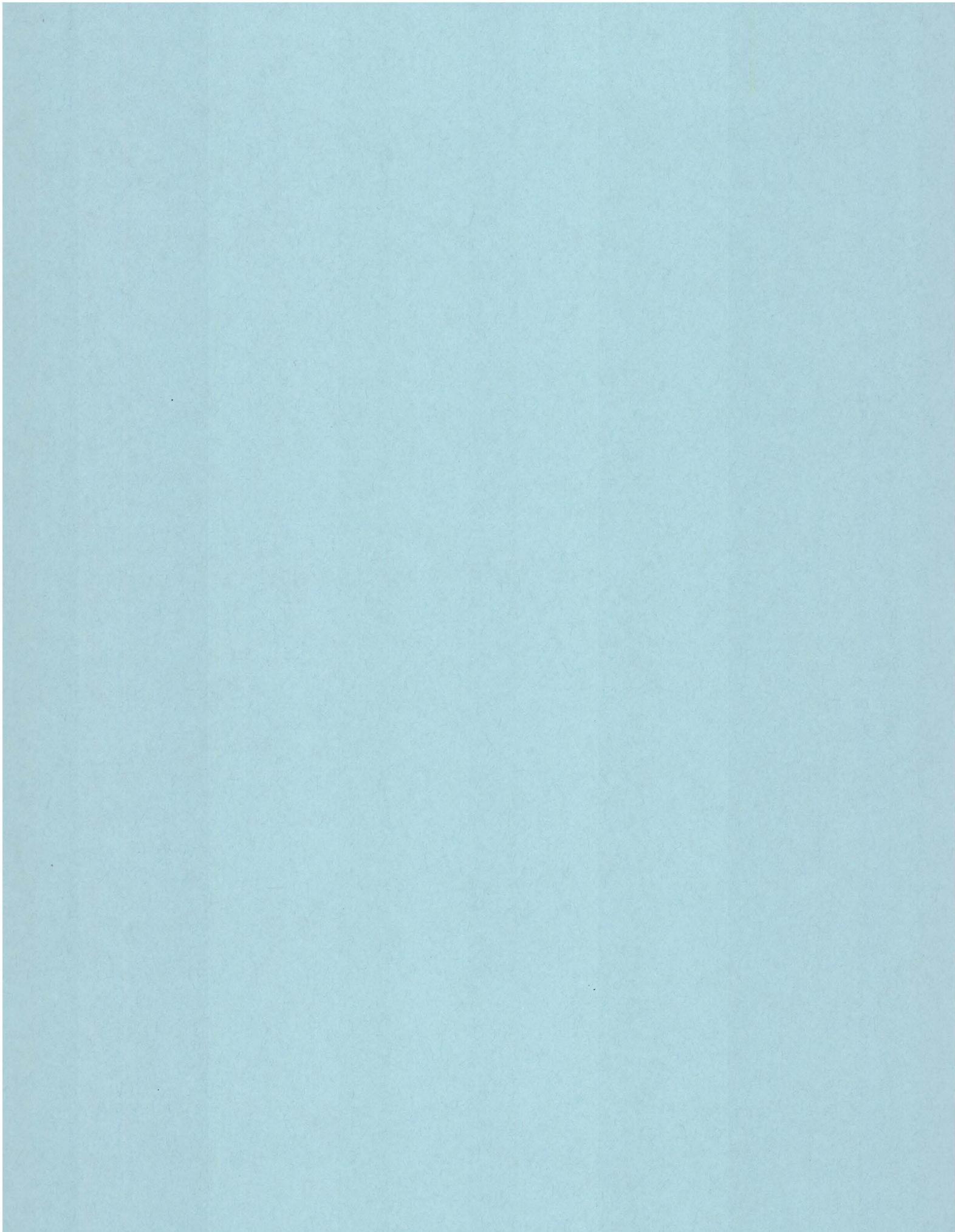
**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**



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TITLE 3
STATE BOARD OF ACCOUNTANCY



APRIL 2008

CHAPTER 3-01-01

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

1. **History.** The state board of accountancy was created in 1913 and originally supervised certified public accountants. The 1975 Public Accountancy Act, codified as North Dakota Century Code chapter 43-02.1, completely revamped the accountancy laws and added licensed public accountants to the board's jurisdiction. The Accountancy Act of 1993 replaced North Dakota Century Code chapter 43-02.1 with chapter 43-02.2.
2. **Legislative intent.** It is the policy of this state, and the purpose of the Accountancy Act of 1993 to promote the reliability of information used for guidance in financial transactions or for accounting for or assessing the financial status or performance of enterprises.
3. **Board membership.** The board consists of five members appointed by the governor. There are four certified public accountants and one licensed public accountant on the board. If there are fewer than twenty-five licensed public accountants in the state, they shall lose representation on the board. Board terms are five years.
4. **Board organization.** The board shall elect from its members a president and a secretary-treasurer, and any other officers the board may require. The officers shall take office immediately following election and shall serve for one year, and shall be eligible for reelection. The president shall preside at meetings of the board; the secretary-treasurer shall preside in the absence of the president.
5. **Compensation of board members.** Each member of the state board of accountancy shall receive compensation of ~~three~~ five hundred dollars for each day, or portion thereof, spent in official business of the board, not to exceed ~~twelve hundred~~ two thousand dollars per fiscal year. ~~In addition, each member shall receive sixty-two dollars and fifty cents for each day or portion thereof spent at the exam site in the role of~~

~~overseeing the administration of the uniform certified public accountant examination.~~

6. **Executive director.** The board is authorized to employ an executive director. The executive director is responsible for keeping the board's records and administering the board's activities.

The board's executive director may be contacted at:

State Board of Accountancy
2701 South Columbia Road
Grand Forks, ND 58201-6029

History: Amended effective August 1, 1981; September 1, 1983; October 1, 1983; July 1, 1991; March 1, 1995; April 1, 2008.

General Authority: NDCC 28-32-02.1, 43-02.2-03

Law Implemented: NDCC 28-32-02.1, 43-02.2-03

CHAPTER 3-01-02

3-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Accountant" means either a certified public accountant (CPA) or a licensed public accountant (LPA), except as provided in section 3-01-02-02.
2. "Accounting concentration" means:
 - a. Through December 31, 1999, thirty semester credits or equivalent of accounting and business law education; and
 - b. After December 31, 1999, twenty-four semester credits or equivalent of accounting education, plus twenty-four credits of other business courses.
 - c. After December 31, 2004, twenty-four semester credits or equivalent of accounting education (not including principles of accounting or equivalent classes), plus twenty-four credits of other business courses (which could include principles of accounting or equivalent classes).
 - d. After December 31, 2008, twenty-four semester credits or equivalent of accounting courses, plus twenty-four credits of other business courses. Principles of accounting or equivalent courses do not count toward the required accounting or business courses. Up to three credits of economics credits may be included in the other business courses.
3. "AICPA" means the American institute of certified public accountants.
4. "Bookkeeping" means the maintaining of financial records and preparation of tax returns. Bookkeeping does not include the preparation of any financial statement or similar such documents on which language similar to that utilized by certified public accountants or licensed public accountants is placed including compilation and review language.
5. "Enterprise" means any person, persons, or entity, whether or not organized for profit, for which an accountant provides services.
6. "Financial statements" means a presentation of financial data, including any accompanying notes, intended to show financial position at a point in time or changes in financial position for a period of time in accordance with generally accepted accounting principles or another comprehensive basis of accounting. Incidental financial data included in management advisory services, reports to support recommendations

to a client, and tax returns and supporting schedules are not financial statements.

7. "NSA" means the national society of accountants.
8. "NASBA" means the national association of state boards of accountancy.
9. "Practice of public accounting" does not include reviews conducted under the AICPA or NSA peer review programs or the AICPA's quality review program or the board's positive review program, or any other similar program approved by this board.

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

History: Amended effective January 1, 1987; July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2003; July 1, 2006; April 1, 2008.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-03

CHAPTER 3-01-03
ETHICS, FIRM OWNERSHIP, AND FIRM REVIEW

Section

<u>3-01-03-01</u>	<u>Code of Ethics</u>
<u>3-01-03-02</u>	<u>Firm Ownership</u>
<u>3-01-03-03</u>	<u>Firm Review</u>

3-01-03-01. Code of ethics. Licensees must observe the code of professional conduct of the American institute of certified public accountants, with references to "member" being understood to apply to licensees. Licensees must also observe the codes of conduct of the general accounting office, the securities and exchange administration, and any other bodies, whenever they are relevant and applicable based on services performed by the licensee.

History: Effective April 1, 2008.

General Authority: NDCC 43-02.2-04

Law Implemented: NDCC 43-02.2-03

3-01-03-02. Firm ownership. A minority of the ownership of a firm practicing public accountancy within this state may be held by individuals who are not certified public accountants or licensed public accountants, but each such owner:

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

When any such owner fails to meet one of these conditions, or is convicted of a felony or other crime involving fraud or dishonesty, or is disciplined by a regulatory agency, that person's ownership in the firm must be fully divested within six months thereafter, unless the board shall determine otherwise.

History: Effective April 1, 2008.

General Authority: NDCC 43-02.2-04

Law Implemented: NDCC 43-02.2-03

3-01-03-03. Firm review. When directed by the board, a firm which performs audit, review, or compilation services is required to undergo a practice review conforming to the standards of the AICPA peer review program, or a program deemed comparable by the board. The board will not require such review more frequently than every three years, except in the case of quality concerns

or the lack of timely review progress. A copy of the review report and letter of acceptance, plus any letters of comment and response issued, are to be submitted to the board when directed. When the review process reveals substantive quality concerns, the board may take various actions against the firm, such as requiring specific continuing education, preissuance report review, accelerated practice review, practice restrictions, and other measures.

History: Effective April 1, 2008.

General Authority: NDCC 43-02.2-04

Law Implemented: NDCC 43-02.2-03

CHAPTER 3-02-02

3-02-02-02. Fee for certificate without examination. The fee for the issuance of a certificate when the board has waived the examination shall be one hundred forty dollars. The fee for a resident to transfer examination grades shall be one hundred forty dollars. Individuals intending to enter the state under the substantial equivalency provisions of ~~North Dakota Century Code section 43-02.2-04.1~~ shall register and pay a registration fee of one hundred forty dollars prior to commencing work in this state.

History: Amended effective March 1, 1995; September 1, 1997; July 1, 1999; September 1, 2001; April 1, 2008.

General Authority: NDCC 43-02.2-03

Law Implemented: NDCC 43-02.2-04

3-02-02-04. Certificate and license annual renewal fees. The annual renewal fee for every CPA and LPA shall be ~~forty-five~~ set by the board but not to exceed one hundred dollars. A CPA or LPA who fails to register or pay the renewal fee by July ~~first~~ thirty-first of the board's current fiscal year shall pay a late filing fee of fifty dollars in addition to the regular annual fee. Individuals ~~working within the state~~ registered under the substantial equivalency provisions are required to file an annual renewal form and pay ~~an~~ the annual renewal fee of ~~forty-five dollars~~, plus the late filing fee if applicable.

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

General Authority: NDCC 43-02.2-03

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

3-02-02-04.1. Fee for annual firm permit. The annual fee for a firm permit is ~~fifty ten~~ ten dollars for firms with one or two licensees, ~~one hundred dollars for firms with three to fifteen licensees,~~ ~~two hundred dollars for firms with sixteen to forty-nine licensees,~~ and ~~three hundred dollars for firms with fifty or more licensees.~~ For firms which provide no audit, review, compilation, or examination of prospective financial information services, the fee is ~~ten dollars~~. A late filing fee of fifty dollars shall also be paid by a firm that fails to register or pay the annual firm permit fee by July ~~first~~ thirty-first of the board's current fiscal year. A firm shall register and pay a firm permit fee before commencing any activity that requires such a permit. Failure to register and pay the appropriate firm permit fees may result in the board proceeding to revoke, suspend, or refuse to renew the certificates and licenses of each of the firm's partners, officers, directors, shareholders, or owners.

History: Effective June 1, 1988; amended effective March 1, 1995; September 1, 1997; October 1, 1999; December 1, 2000; December 1, 2003; April 1, 2008.

General Authority: NDCC 43-02.2-03

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

3-02-02-08. Reinstatement fee. A CPA, LPA, or permitholder whose certificate, license, or permit is suspended, relinquished, not renewed, or revoked, is required to pay a reinstatement fee of one hundred dollars in addition to the annual fee, as provided in sections 3-02-02-04 and 3-02-02-04.1, and must also satisfy the board that all current requirements to hold a certificate or license or permit in good standing have been met. Application for reinstatement shall be in writing, showing good cause for the reinstatement; such application may be submitted at any time and will be considered at the board's next regular meeting. If the board rules against the applicant, the applicant shall have the right to request a hearing on the application, and such hearing will be held within ninety days from receipt of such request at a time and location set by the board.

~~A CPA or LPA who voluntarily relinquishes the certificate or license may be subsequently reinstated upon payment of the current annual registration fee and satisfying the board that all current requirements to hold a certificate or license in good standing have been met.~~

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; April 1, 2008.

General Authority: NDCC 43-02.2-03

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

CHAPTER 3-03-03

3-03-03-01. Coverage of requirement. The continuing education requirements promulgated by the board will apply to all CPAs and LPAs except those on retired status. In order to enter public practice either full time or part time in North Dakota, an accountant must meet the continuing education requirements as specified in section 3-03-01-01 and furnish evidence of familiarity with current procedures and practices in the service areas they intend to practice.

A late filing fee of fifty dollars will be imposed on any CPA or LPA whose continuing education reports are not received submitted to the board by the date indicated on the reporting form.

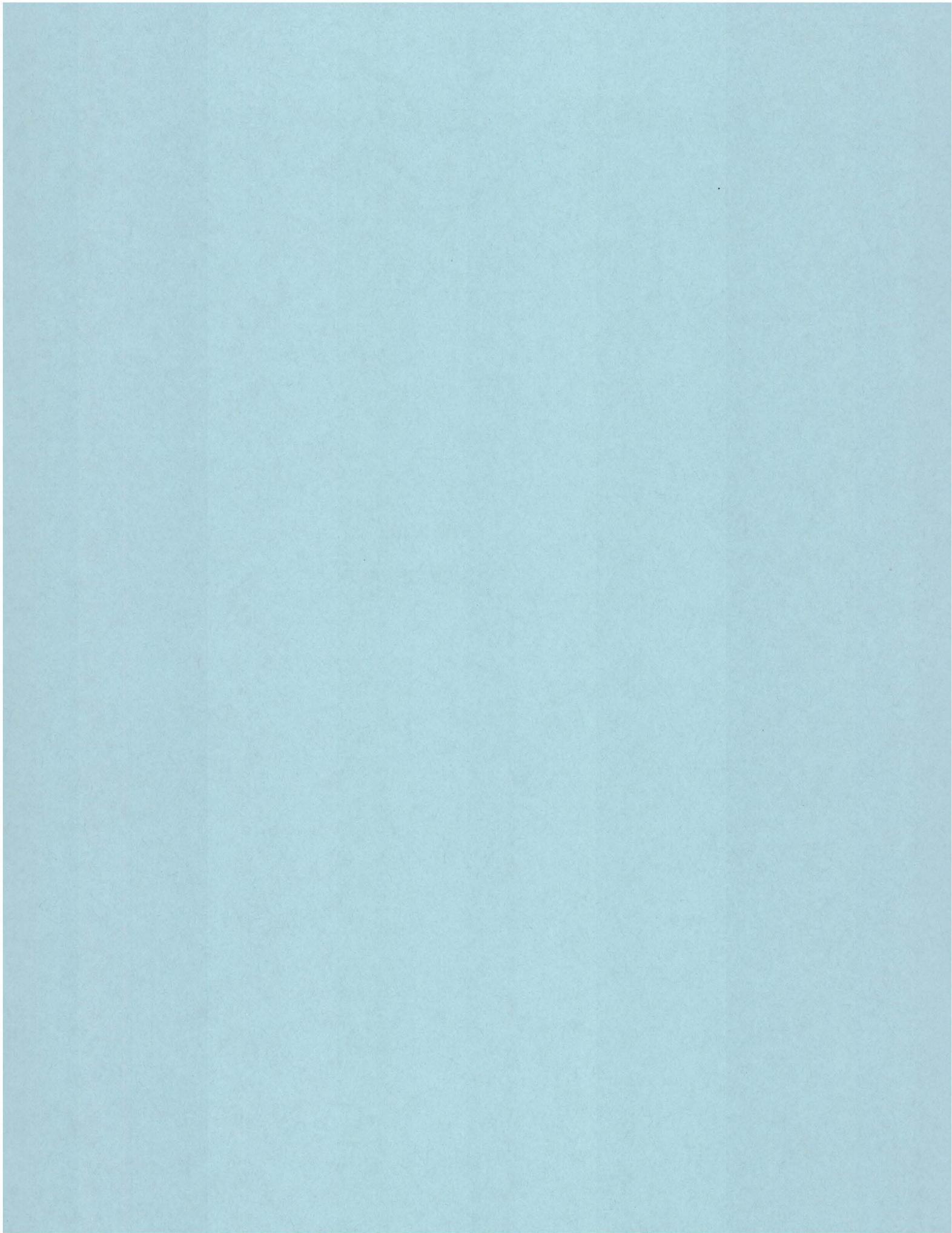
History: Amended effective July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2000; December 1, 2003; April 1, 2008.

General Authority: NDCC 43-02.2-03

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



TITLE 10
ATTORNEY GENERAL



APRIL 2008

CHAPTER 10-16-01

10-16-01-01. Definitions. As used in this article:

1. "Applicant's agent" means a general manager, sole proprietor, partner of a partnership, or, for a corporation, an officer or director who is primarily responsible for financial affairs or a shareholder who owns ten percent or more of the common stock, of a business that is applying for or renewing a license. A general manager is a person who regularly is onsite and primarily responsible and accountable for managing and controlling the day-to-day operation of the business.
2. "Draw" means the formal process of randomly selecting winning numbers, letters, or symbols that determine the number of winning plays for each prize level of a game.
3. "Game" means an on-line game authorized by the lottery.
4. "Game group" means a group of lotteries that have joined together to offer a game on a multi-state basis according to the terms of the MUSL and group's rules.
5. "Grand prize" means the top prize that can be won in a game.
- 5: 6. "Lottery" means the North Dakota lottery.
- 6: 7. "Multi-state lottery" means a lottery game that spans the individual borders of a state, jurisdiction, province, district, commonwealth, territory, or country.
- 7: 8. "MUSL" means the multi-state lottery association.
- 8: 9. "Online gaming system" means a computer system designed to control, monitor, communicate with a terminal, and record play transactions and accounting data.

- 9: 10. "Play" means the numbers, letters, or symbols that are on a ticket or properly and validly registered subscription play to be played by a player in a draw, excluding a lottery promotion.
- 40: 11. "Play area" means the area of a play slip that contains one or two more sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers, letters, or symbols that correspond to the game.
- 44: 12. "Play slip" means a card used in marking a player's selections of numbers, letters, or symbols and containing one or more play areas for a game.
- ~~42:~~ ~~"Product group" means a group of multi-state lotteries that have joined together to offer a particular game according to the terms of the MUSL and group's rules.~~
13. "Quick pick" means a random selection of numbers, letters, or symbols by a computer system that are printed on a ticket or properly and validly registered subscription play and played by a player for a draw in a game.
14. "Retailer fraud" means an owner or employee of a licensed retailer who knowingly and intentionally:
- a. Fails to properly validate a player's winning ticket;
 - b. Fails to pay the player the proper prize amount on a winning ticket;
 - c. Fails to provide the player the proper exchange ticket on a winning multi-draw ticket; or
 - d. Performs any other act that causes financial harm to a player in violation of the lottery law or rules.
15. "Set prize" means all prizes, except the grand prize for a game that are to be paid by a single cash payment and, except as provided by rule, will be equal to the prize amount established by the MUSL product game group for the prize level of the game.
- 45: 16. "Terminal" means a device authorized by the lottery and operated by a retailer or the lottery to function in an on-line, interactive mode with the lottery's computer system to issue a ticket and enter, receive, and process a lottery transaction, including a purchase, validation of a ticket, and ~~transmittal~~ issuance of a report.
- 46: 17. "Ticket holder" means a person who has signed a ticket or possesses an unsigned ticket.

47. 18. "Validation" means the process of determining whether a ticket presented for a prize is a winning ticket.

48. 19. "Winning numbers" means the numbers, letters, or symbols randomly selected at in a draw that are used to determine a winning play contained on a ticket or properly and validly registered subscription play or randomly selected in a lottery promotion to determine a winning prize stated on a ticket or coupon.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-01-03. Debt setoff of prize. In applying North Dakota Century Code section 53-12.1-12, if two or more persons or state agencies make a claim to part or all of a player's prize amount and one of the claims is for child support, the lottery shall transfer the amount claimed for child support directly to the state disbursement unit of the department of human services, transfer any remaining prize amount up to the amount of the other claim to Burleigh County district court, and then make a payment of any remaining prize amount to the player. However, if none of the claims is for child support, the lottery shall transfer ~~an amount up to~~ the total amount of the claims to Burleigh County district court and make a payment of any remaining prize amount to the player. The lottery shall notify each of the affected state agencies or persons of the amount transferred to district court. The lottery shall notify the player in writing of the proposed debt setoff and the player's recourse. If the player disputes the child support claim, the player shall pursue remedial action according to subsection 2 of North Dakota Century Code section 50-09-14. If the player disputes a claim unrelated to child support, the player may pursue remedial action through district court.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-12, 53-12.1-13

10-16-01-05. Restrictions, requirements, and authorizations.

1. An employee of the lottery or a member of the immediate family or a person who regularly resides in the same household of the employee may not receive a gift, gratuity, or other thing of value, excluding food, nonalcoholic beverage, or incidental item, from an applicant for a license, licensed retailer, or online gaming system or advertising vendor.
2. The lottery may waive a rule when it is in the best interest of the state, lottery industry, or public.
3. In applying subdivision d of subsection 1 of North Dakota Century Code section 53-12.1-11, personal information on a winning player does not include an amount won or the player's city or state of residence. If

the player signs a release, the lottery may disclose or publish personal information that the player authorizes to be released. Subdivision d of subsection 1 of North Dakota Century Code section 53-12.1-11 does not apply to cash, merchandise, a subscription, gift certificate, or a ticket that the lottery awards as a prize in a promotion.

4. If a lottery rule conflicts with an official or updated MUSL or ~~product~~ game group rule or game rule, the official or updated MUSL or ~~product~~ game group rule or game rule supersedes the lottery rule. The official MUSL or ~~product~~ game group rule or game rule governs the administration of a game.
5. The lottery may conduct a promotion that includes a prize and shall prescribe promotional rules. The prize may be cash, gift certificate, ticket, subscription, or merchandise.
6. The lottery may immediately withdraw a lottery terminal, equipment, and supplies from a retailer's site if the retailer's license is inactive, suspended, revoked, or the retailer's license was not renewed.

History: Effective February 1, 2004; amended effective April 1, 2006; July 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-08, 53-12.1-11, 53-12.1-13

CHAPTER 10-16-02

10-16-02-01. License application and fee.

1. An applicant shall initially apply for a license for a site on a form prescribed by the lottery and remit an application fee of fifty dollars that is not refundable. The licensing fiscal year is October first through September thirtieth. An applicant may apply for a license for more than one site. A separate application is required for each site. Approval of an applicant is within the sole discretion of the lottery. Only one retailer may have a license for a specific site. A retailer shall apply for a renewal license for a site before October first of each year.
2. If the lottery approves an applicant for licensure for a site, the applicant shall remit a license fee of five hundred dollars for the applicant's first year for that site within fourteen days of when the applicant is notified by the lottery of its pending licensure. This fee is not prorated or refundable unless an applicant is disqualified according to section 10-16-02-03 before the applicant sells a ticket or a new owner purchases or leases a site and applies for a license before the former owner sells a ticket. After the first partial or full year of licensure, the annual license renewal fee for the site is one hundred fifty dollars and is not prorated or refundable on or after October first.
3. If a licensed alcoholic beverage establishment and an organization that is licensed under North Dakota Century Code chapter 53-06.1 to conduct a game of chance at that site both apply for a license for the site, the establishment has the first privilege. If the establishment does not apply and the organization does apply for a license, the organization shall obtain written authorization from the establishment and provide the authorization with the application. If the organization is issued a license, the establishment's authorization is valid as long as the organization is licensed to conduct a game of chance at that site.
4. A license allows a retailer to sell a ticket for all authorized games.
5. The lottery may license a retailer on a seasonal basis or temporary basis for a special event or lottery promotion. A special event is an infrequent, significant, and identifiable activity in the community, such as a fair. The director of the lottery may waive the application or license fee, or both, for a temporary site for a presently licensed or new retailer that sells tickets a ticket on a temporary basis at a the site for a special event or lottery promotion.
6. The lottery may issue a conditional license to an applicant, shall designate the time period for which the license is valid, and may impose any conditions related to:
 - a. Determining whether an applicant or retailer is eligible for a license;

- b. Issuing a license to an applicant or retailer whose regular license has been relinquished, suspended, or revoked;
 - c. Applying a minimum sales quota on an applicant or retailer;
 - d. Requiring an applicant or retailer to reimburse the lottery for the lottery's net cost of installing and maintaining the terminal and telecommunications equipment at a business if the applicant or retailer does not meet or maintain a mutually agreed minimum sales quota; or
 - e. Accessibility of a retailer to an individual who is disabled.
7. A license is a privilege and an applicant or retailer does not have a vested or legal right to the license.
 8. Except as provided by subsection 5, an applicant's site must be a permanent business location.
 9. The lottery may require a security deposit from an applicant or retailer.
 10. If required by law, an applicant must be currently registered with the secretary of state.
 11. A license may not be sold, transferred, assigned, pledged, or otherwise conveyed from a retailer to another person.
 12. A retailer shall provide the lottery a thirty-day written notice of the retailer's intent to sell or otherwise transfer ownership of the retail business to another person. The acquiring person shall apply for a new license for that site if the person desires to be a retailer.
 13. If a license becomes lost or destroyed, a retailer shall apply for a duplicate license and explain to the lottery what happened to the original license.
 14. If the lottery denies an applicant a license, the lottery shall notify the applicant and state the reason for the denial.
 15. If a license is revoked and reinstated within the same licensing fiscal year, no additional license fee is due.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

10-16-02-02. Criteria for selecting an applicant. The lottery shall consider criteria in selecting an applicant for licensure or relicensure as a retailer, including:

1. Geographic or strategic location of a business in a town, or city, ~~or community~~, and its location in relation to population, highways, and traffic patterns;
2. Accessibility of a business to the public and an unrestricted public access policy;
3. Regular contact with a significant number of persons and the average number of customer sales transactions per day;
4. Normal business hours and days of the week that the business is open;
5. Number of years the business has been operating at its present location;
6. Historical gross sales of nonlottery products or expected gross sales of lottery tickets of a business, or both;
7. Physical security of a business, safety of the money derived from selling a ticket, and whether the business has a video surveillance or alarm system;
8. Financial condition, financial responsibility, and creditworthiness of the business;
9. Criminal history record, character, and reputation of the applicant's agent;
10. Sufficiency of an existing retailer to serve the public convenience in an applicant's town, or city, ~~or community~~;
11. Anticipated or proven capability of a business to best serve the public interest by actively promoting the sale of a ticket, including displaying or providing point-of-sale promotional items to the public;
12. Initial or incremental cost of installing and maintaining a terminal and telecommunications equipment at a business or difficulty of using preferred telecommunications equipment;
13. Type of business and type of product, service, or entertainment offered at a site and whether it is acceptable to the general public and does not adversely impact the credibility, reputation, or image of the lottery. An applicant's primary retail business may not be to sell a lottery ticket. An eligible applicant may not be a pawnbroker, bank, check cashing or cash advance outlet, currency exchange business, credit union, consumer finance company, collection agency, or mortgage broker;
14. Type and volume of state government services available at a business, including fishing and hunting licenses;

15. Recommendation of the lottery's online gaming system vendor;
16. Accessibility of a business to a person who is disabled;
17. Type of building housing the business; and
18. Site inspection.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

10-16-02-06. Duties. A retailer shall:

1. Comply with the lottery law, rules, promotional rules, and terms of a license agreement prescribed by the lottery;
2. Display a lottery license in an area visible, but not accessible, to the public where a ticket is sold and redeemed. A retailer shall prominently display signage and promotional and point-of-sale items provided by the lottery. A retailer may advertise and use, display, or make available other appropriate promotional and point-of-sale items. On request of the lottery, a retailer shall discontinue an advertisement or promotion that the lottery determines is in noncompliance with subsections 2 and 3 of section 10-16-01-02;
3. Display a problem gambling helpline telephone number;
4. Provide a secure operating space for a terminal at a location approved by the lottery or its online gaming system vendor. A retailer may not move the terminal to a different location at a site without written authorization from the lottery. If the retailer desires to have the terminal relocated at the site, only a qualified representative of the lottery's online gaming system vendor may relocate the terminal;
5. Provide dedicated alternating current to a duplex electrical receptacle for lottery equipment, including a terminal. Only lottery equipment may be on the circuit. A retailer shall pay the installation cost of the receptacle and monthly costs of electricity to operate the lottery equipment. The lottery shall provide the retailer with a schematic of the required amperage, voltage, and wiring of the receptacle;
6. As requested by the lottery, have an employee attend a training session sponsored by the lottery, review training material, complete a terminal-based tutorial, or notify the lottery if a new employee needs training on operating a terminal;

7. Exercise care in operating a terminal and immediately notify the lottery's online gaming system vendor of a terminal malfunction, including the issuance of an invalid ticket, inability to sell or redeem a ticket, and nonissuance of a ticket. Except to clear a paper jam, the retailer may not perform mechanical or electrical maintenance on the terminal. Unless approved by the lottery, a retailer may not attach or adhere any stickers, decals, or advertisements on a terminal;
8. Replace ticket stock and clear a paper jam as necessary in a terminal;
9. Monitor the supply of game brochures, point-of-sale items, ticket stock, and play slips and notify the lottery or its online gaming system vendor when an item is in short supply;
10. Actively promote and sell a ticket and redeem a winning ticket during the retailer's core business hours on the days that the retailer is open and when a terminal is operating. If the retailer's core business hours are earlier or later, or both, than the hours that the terminal is operating, the retailer shall post the hours during which a person may redeem a winning ticket;
11. Actively promote the sale of subscriptions;
12. Prohibit a person under age eighteen from buying a ticket or redeeming a winning ticket;
13. Not extend credit to a player or accept a credit card from a player for the purchase of a ticket or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. If a retailer delivers a ticket to a player's residence, the player shall prepay or pay for the ticket upon delivery. A retailer may not loan money to or accept a postdated check from a player;
14. Maintain a level of ticket sales set by the lottery based on a minimum sales program;
15. Be financially responsible and personally liable to the lottery for money derived from the sale of a ticket, less money related to a sales commission and money paid on a redeemed winning ticket. The retailer shall allow money from the sale of a ticket that is deposited by the retailer in a bank account to be transferred to the lottery by electronic funds transfer on a weekly basis or other period prescribed by the lottery;
16. Store ticket stock, supplies, terminal, and related equipment in a safe place to prevent loss, theft, or damage;

17. Prominently post the winning numbers for a draw and estimated grand prize of the next draw of a game where a ticket is sold as soon as reasonably possible after the draw for the game;
18. Redeem a winning ticket and may pay a prize of up to five hundred ninety-nine dollars in cash or by business check, regardless of which retailer sold the ticket. The retailer may not charge a fee for redeeming a ticket and may not refuse to redeem a winning ticket sold by another retailer;
19. File a claim for credit for a printed defective ticket as prescribed by the lottery;
20. Permit an employee or agent of the lottery who has first shown proper identification to the retailer to review the retailer's accounting records and inspect, maintain, replace, or remove lottery equipment, supplies, ticket stock, or a record or recorded video from the site without prior notice during the retailer's normal hours of operation;
21. Notify the lottery in writing thirty days before there is a change of the bank account maintained for electronic funds transfer;
22. Make it convenient for the public to buy and redeem a ticket. A retailer may sell a ticket through a drive-up window;
23. Have a copy of the lottery law and rules at the site available near the terminal for review by any person;
24. Incur the loss from theft of a ticket or gift certificate;
25. Defend, indemnify, and hold harmless the lottery and state of North Dakota from any claim of any nature, including all costs, expenses, and attorney's fees, that may result from or arise out of an agreement with the lottery, except for a claim that results from or arises out of the state's sole negligence;
26. Upon revocation, relinquishment, or nonrenewal of a license, immediately return all lottery-related equipment and supplies, including unused ticket stock. The retailer is liable for money still owed the lottery; and
27. Maintain complete and accurate records and retain them for one year related to the sale and redemption of a lottery ticket. Records must include:
 - a. ~~Inventory log of the receipt and use of ticket stock; and~~

- b. ~~Weekly~~ weekly terminal-issued reports of electronic funds transfers transactions.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

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

1. The lottery shall credit a retailer's account for:
 - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;
 - b. A sales commission of five percent of the amount of an initial or renewal subscription sale that is transacted through the lottery on a subscription application form that is issued by the retailer's terminal or procured from the retailer with the retailer's license number on it. The retailer must be currently licensed when the subscription application form is processed by the lottery. There is no sales commission on the value of a prize on a winning subscription play that automatically extends a subscription period according to subdivision a of subsection 10 of section 10-16-03-08.1; and
 - c. A sales bonus for selling a ticket with a winning play, or for an initial or renewal subscription sale described by subdivision b, including an extended subscription period, that has a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play and of a ticket or when the winning ticket or subscription play is validated. ~~The sales bonus is payable to the retailer after the winning ticket is validated by the lottery.~~ If the winning play for POWERBALL® has the power play option or winning play for HOT LOTTO® has the triple sizzler option, the retailer's account must also be credited for an additional bonus as stated below:

<u>Prize</u>	<u>Bonus</u>	<u>Additional Bonus</u>
POWERBALL®		
Grand prize	\$50,000	Additional \$50,000 with power play
\$200,000	\$2,500	Additional \$2,500 with power play
\$10,000	\$500	Additional \$500 with power play
HOT LOTTO®		
Grand prize	\$5,000	<u>Additional \$5,000 with triple sizzler</u>
\$10,000	\$500	<u>Additional \$500 with triple sizzler</u>

WILD CARD 2®

Grand prize	\$2,000
\$5,000	\$250

2BY2®

Grand prize	\$500
<u>\$22,000</u>	<u>\$500</u>
<u>\$44,000*</u>	<u>\$1,000</u>

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

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

History: Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008.

General Authority: NDCC, 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-02-10. Denial, suspension, or revocation of a license. The lottery may deny, suspend, or revoke a license if the applicant's agent has a disqualifying criminal history record or an applicant or retailer:

1. Obtained a license by failing to complete, failing to disclose information, or misrepresenting data on an application;
2. Violated a lottery law, rule, or term of a license agreement;
3. Failed to meet or maintain eligibility criteria for licensure;
4. Failed to file a required security deposit;
5. Changed the location of a retail business;
6. Failed to demonstrate financial responsibility or maintain a reasonable financial condition of the business, a check issued for payment of a prize on a winning ticket or an electronic funds transfer of money from a retailer's bank account to the lottery was dishonored for any reason, or is delinquent in remitting money owed to the lottery;
7. Filed for, or was involuntarily placed in, bankruptcy or receivership;
8. Acted in a manner or is involved in an activity at a site that is harmful to the public confidence in the integrity, reputation, or image of the lottery;

9. Experienced recurring theft or other negative incidents at the site that endangers the security of the lottery;
10. Failed to produce for review a record, document, or other item required by a lottery law, rule, or term of a license agreement;
11. Knowingly sold a ticket to or redeemed a winning ticket from a person under age eighteen;
12. Failed to properly redeem or pay a player the proper prize for a winning play;
13. Failed to actively promote sales of tickets or properly display and provided point-of-sale promotional items to the public;
14. Failed to sell a minimum number of tickets as set by the lottery and another retailer adequately serves the public convenience; or
15. Failed to maintain an active federal employer identification number and, if necessary, North Dakota sales tax permit number; or
16. Participated in retailer fraud.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-09, 53-12.1-13

CHAPTER 10-16-03

10-16-03-01. Games authorized. The lottery may conduct online games of POWERBALL®, ~~including the POWERBALL® power play option,~~ HOT LOTTO®, WILD CARD 2®, and 2BY2® ~~that are administered by the MUSL, and a raffle.~~

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-03-02. Ineligible player. A ticket issued by a retailer or a subscription may not be bought by, or a prize won by that ticket or subscription play or lottery-related promotion may not be paid or issued to:

1. An employee, officer, or director of the lottery's online gaming system vendor or the MUSL;
2. A person who regularly resides in the same household of a person described in subsection 1;
3. A minor; or
4. A person who is in the United States illegally.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-08, 53-12.1-13

10-16-03-05. Sale or gift of a ticket.

1. Only a retailer may sell a ticket and only at the site listed on a license. The sales price of a ticket is exempt from sales tax. Except as authorized by the lottery or for a lottery promotion, sale of a subscription, or delivery of a ticket by a retailer, a complete sales transaction between the retailer and a player must occur at a terminal, including the exchange of money, exchange of a play slip if the player uses it, and exchange of the ticket. The retailer shall accept cash and a lottery gift certificate and may, at its option, accept a check or debit card from a player. The retailer may not extend credit to a player or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. A retailer may not loan money to a player or accept a postdated check from the player. A retailer is responsible for a check that is not collectible for any reason. This subsection does not prevent a person who may lawfully buy a ticket from giving a gift of the ticket to another person, or prevent a business or organization from purchasing a ticket and providing it as

a gift or prize to a person, except to a person under age eighteen or an ineligible player according to section 10-16-03-02.

2. A person may buy a ticket on behalf of another person or group of people, provided that the person provides the ticket without charging a procurement fee and the other person is not, or the group of people does not include, a person under age eighteen or an ineligible player according to section 10-16-03-02.
3. Except for a subscription, a player shall place a play through a retailer who acts as an agent for the player in entering the play. The player shall place a play by using and hand-marking a play slip provided by the retailer or requesting the retailer to place a quick pick. The retailer may assist and train a player how to complete a play slip. It is the sole responsibility of the player to verify the accuracy of a game play and other data printed on a ticket. The retailer may not use a copy of a play slip or other material in a terminal's play slip reader or permit any device to be connected to a terminal to enter a play.
4. A retailer shall use a terminal to issue a ticket containing the selected sets of numbers, letters, or symbols each set of which is a play. A retailer's sale of a ticket is final. A player may not void or cancel a ticket by returning the ticket to the retailer and the retailer may not buy back a ticket from a player. If data printed on a ticket is incorrect, a ticket is printed in error, an employee, volunteer, or agent of a retailer steals a ticket from the retailer, or if any other issued ticket can be used to claim a prize, the retailer cannot void or cancel the ticket or return the ticket to the lottery for credit. If the retailer cannot sell the ticket, the retailer owns the ticket and may redeem a winning ticket. However, the lottery may credit a retailer's account for a ticket that is illegible, mutilated, or otherwise defective as it was printed and that because of its physical condition cannot be sold. A retailer shall comply with a policy of the lottery related to criteria for sending a claim for credit of a defective ticket to the lottery. The retailer may not send a defective ticket to the lottery until after the draw for the game for which the ticket was issued.
5. A retailer shall sell a ticket only for the standard price of the ticket. However, a retailer may do a promotion for a period not to exceed ninety consecutive days in any six-month period in which a retailer offers a ticket for sale through a discount provided that the retailer accounts for the standard price of the ticket to the lottery. A discount includes, for example, selling six tickets for the price of five tickets, selling two tickets for the price of one ticket, and selling a ticket for one-half price. A retailer may buy a ticket for the standard price of the ticket and offer it, at no charge, to a person. A recipient of a ticket in a promotion may not be under age eighteen or an ineligible player according to section 10-16-03-02. A retailer may conduct other promotions, including:

- a. Second chance drawings of winning or nonwinning tickets or other entry forms provided that a person may not be required to purchase anything to participate in the drawing;
 - b. Giving away a ticket with the purchase of a product or service;
 - c. Giving away or discounting a product or service with the sale of a ticket or return of a number of nonwinning tickets; and
 - d. With the purchase of a ticket, a person may spin a wheel, for example, to select a free prize, product, or service.
6. A person who buys or accepts a ticket, attempts to redeem a ticket for a prize, or otherwise participates in a draw agrees to comply with and abide by the lottery law, rules, procedures, policy, MUSL or ~~product~~ game group rule or game rule, and decision of the lottery.
 7. A person who buys or accepts a ticket, attempts to redeem a ticket for a prize, or otherwise participates in a draw agrees to accept the decision of the lottery regarding the validity of the ticket, and any prize payment determinations relating to that ticket, and to release the state, lottery, MUSL, ~~product~~ game group, and their officers, employees, agents, representatives, and contractors from any liability regarding that ticket or payment of that prize and are not responsible or liable for:
 - a. A lost or stolen ticket or incorrectly read play slip; or
 - b. Paying a prize related to a damaged, destroyed, erroneous, illegible, or mutilated ticket.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-07, 53-12.1-08, 53-12.1-13, 57-39.2-04

10-16-03-07. Validation of a ticket.

1. A retailer shall use a terminal to validate a ticket before the retailer may pay a prize on the ticket. A retailer that pays a player a prize without first validating the ticket assumes the financial risk that the ticket is not an actual winning ticket or the ticket was previously redeemed. The lottery may not reimburse a retailer for a prize paid in error by the retailer. A ticket that does not pass validation is invalid and ineligible for a prize. Except as provided by subsection 18 of section 10-16-03-08, an original ticket is the only proof of a game play and submitting a winning ticket to the retailer or lottery is the only method of claiming a prize. A play slip or copy of a winning ticket has no monetary or prize value and is not evidence of a ticket bought or of numbers selected for a draw. A

ticket must have been bought from a North Dakota retailer and meet all of these validation requirements:

- a. A retailer must have issued the ticket in an authorized manner;
- b. The play, including the combination of numbers, letters, or symbols selected by a player or quick picked, evidenced by the ticket, must reach and be accepted and recorded by the lottery's online gaming system before the cutoff time for a draw. The draw for a game is held on the days determined by the ~~product~~ game group. Even if a player intends for a retailer to enter the player's play before the cutoff time for the present draw, the play is only eligible for the draw that is printed on the ticket;
- c. The ticket must not have been previously paid or voided by the lottery;
- d. The ticket must not have been stolen, or be counterfeit, altered, mutilated, reconstructed, unreadable, illegible, irregular, partly blank, incomplete, defective, or an exact duplicate of another winning ticket. The ~~product~~ game group, MUSL, and lottery are not responsible for a ticket that is altered in any manner;
- e. A ticket is void unless the ticket is printed on a paper stock roll that was validly issued to and used by the retailer that sold the ticket;
- f. The ticket validation number must be legible, intact, presented in its entirety, and correspond, based on the lottery's computer validation file, exactly to the date and selected numbers printed on the apparent winning ticket that was sold at a specific site;
- g. The ticket may not be marked in any way, except by a player to place a signature on the back side of the ticket to claim a prize or by a retailer to deface or void the ticket after it was redeemed, with the intent to commit fraud;
- h. If the total prize value of all plays of a winning ticket is five thousand dollars or more, the ticket must pass a confidential security check by the lottery;
- i. Upon request by the lottery, a claimant of an apparent winning ticket shall disclose to the lottery the name of the retailer from whom the claimant bought the ticket, date of purchase, and approximate time; and
- j. A validation requirement adopted by the MUSL or ~~product~~ game group.

2. After a retailer validates a winning ticket, the retailer shall, if sufficient funds are available, pay the player the prize value. However, a retailer shall redeem a winning ticket that has a prize value of fifty dollars or less. A retailer ~~may deface or tear up~~ shall return the branded winning ticket and discard it or player copy of the terminal receipt to the player and retain the ticket or retailer copy of the terminal receipt, or both, for recordkeeping purposes. If a retailer manually validates a winning ticket, the retailer shall initial and write on the face of the ticket the prize amount and date redeemed. After a retailer validates a nonwinning ticket, the retailer shall return the nonwinning ticket and player copy of the terminal receipt to the player. The player may discard a redeemed winning or nonwinning ticket or and player copy of the terminal receipt, or both.
3. The lottery shall credit a retailer's account for a prize actually paid by the retailer on a validated redeemed winning ticket.
4. The lottery's determination on a contested validation is final.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

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

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.
2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.
3. A ticket for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. ~~Except for the grand prize of a game, an~~ An unclaimed prize is forfeited and retained by the lottery. ~~If~~ However, if the grand prize for the game of POWERBALL®, HOT LOTTO®, or WILD CARD 2® is unclaimed, the MUSL shall administer the grand prize money.
4. A person who owns or redeems a winning ticket:

- a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and product game group game rules related to the game for which the ticket was issued; and
 - b. Agrees that the state, lottery, the MUSL, product game group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.
5. The owner of a winning ticket may win only one prize per play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.
 6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.
 7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.
 8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:
 - a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or
 - b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.
 9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may redeem the ticket and pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.

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

11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim form and instruct the claimant how to file a claim with the lottery, as follows:
 - a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;
 - b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;
 - c. The prize claim form and ticket must be presented or mailed to the lottery;
 - d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants; and
 - e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.

12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.
13. Except as provided by rule, if two or more plays win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a set prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.
14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.
15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.
16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.
17. A prize may not be payable to a trust until after the lottery conducts a debt setoff on the beneficiaries of the trust.
18. If a player redeems an original multi-draw ticket before the ticket's last draw and a retailer returns the original ticket, rather than an issued exchange ticket, to the player, the lottery may not pay another prize on the original ticket until after the exchange ticket expires and has not been redeemed.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

10-16-03-08.1. Subscription.

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

3. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery. A player may apply for a subscription on the lottery's web site or by mail, by telephone, or in person. A player may use cash, check, debit card, or authorized credit card to pay for a subscription.
4. A person must be at least eighteen years of age.
5. A person must have a mailing address within the state of North Dakota when the original or renewal subscription application form was submitted to the lottery.
6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.
7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may, based on the owner's request, split a prize among two or more persons provided that the share of each person's prize is equal to or more than six hundred dollars.
8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation card to the subscriber. The confirmation card is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation card must include:
 - a. Name and address of the subscriber;
 - b. Assigned subscriber number;
 - c. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;
 - d. Number of and starting and ending dates of the draws;
 - e. Numbers, letters, or symbols of the ~~plays~~ play;
 - f. Notice that the subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and
9. Explanation of how a prize will be awarded.
9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified on the confirmation card. The effective

date of a new subscription play cannot be sooner than fourteen days from the original date of subscription. The effective date of a renewal subscription play can begin with the next draw following the end of the current subscription.

10. If the value of a prize on a winning subscription play for a draw is:
 - a. Five dollars or less, the lottery shall automatically extend the subscription period by the number of draws equal to the value of the winning play;
 - b. Equal to or more than six dollars and less than six hundred dollars, the lottery shall send the player a check for the prize; or
 - c. Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.
11. If the owner of a subscription changes the owner's name or address, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

History: Effective November 8, 2005; amended effective January 3, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

10-16-03-09. Payment of a prize to a person's estate. If a winning player dies during the annuity payment period of a prize, the ~~product~~ game group, upon the petition of the estate of the deceased player to the lottery may accelerate the payment of the remaining prize to the estate. The lottery may rely on a certified copy of a court's appointment of a personal representative or other evidence that a certain person is entitled to the payment of the remaining prize. If the ~~product~~ game group approves the petition, then securities, cash, or both securities and cash held for the deceased player that represents the present value of that portion of a future lottery payment to be accelerated may be distributed to the estate. The identification of the security to fund the annuitized prize and responsibility for valuing the security and determining the present value of an accelerated lottery payment are at the discretion of the ~~product~~ game group. Payment to the estate of the prize of the deceased owner releases the MUSL ~~product~~ game group, lottery, and state of any additional liability for the prize.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-08, 53-12.1-13

CHAPTER 10-16-04

10-16-04-02. Expected prize pool percentages and odds. The minimum grand prize is fifteen million dollars and is paid on a pari-mutuel basis. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts with these expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds**</u>
5 white + 1 red	Grand prize	60.58%*	1:146,107,962
5 white + 0 red	\$200,000	11.22%	1:3,563,609
4 white + 1 red	\$10,000	3.42%	1:584,432
4 white + 0 red	\$100	1.40%	1:14,254
3 white + 1 red	\$100	1.68%	1:11,927
3 white + 0 red	\$7	4.81%	1:291
2 white + 1 red	\$7	1.88%	1:745
1 white + 1 red	\$4	6.31%	1:127
0 white + 1 red	\$3	8.70%	1:69

Overall odds of winning a prize on a one dollar play are 1:36.6.

*When the grand prize reaches a new high level, the prize pool percentage allocated to the grand prize must be reduced to the percentage needed to fund the maximum grand prize increase as determined by the product game group, with the remainder funding the match 5 bonus prize category.

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

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

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

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded.
2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the product game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw. If a new

high grand prize is not won in a draw, the prize money allocated for the match 5 bonus prizes must roll over and be added to the match 5 bonus prize pool for the next draw.

3. When the grand prize reaches a new high annuitized amount, the maximum amount to be allocated to the grand prize pool is an additional twenty-five million dollars (annuitized) or an amount set by the ~~product~~ game group. Any amount of the grand prize percentage that exceeds the twenty-five million dollar (annuitized) increase must be added to the match 5 bonus prize pool. The match 5 bonus prize pool is created, and must accumulate until the grand prize is won, at which time the match 5 bonus prize pool must be divided equally by the number of plays that win the match 5 prize. If there is no match 5 winning play on the draw when the new high grand prize is won, the match 5 bonus prize pool must be divided equally by the number of plays that win the match 4+1 prize.
4. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the guaranteed annuitized grand prize must be determined by dividing the guaranteed annuitized grand prize by the number of winning plays.
5. The prize money allocated to the match 5 bonus prize must be divided equally by the number of plays that win the match 5 prize when a play wins the new high grand prize amount.
6. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in thirty graduated payments with the initial payment being made in cash, followed by twenty-nine payments (increasing each year) by a rate determined by the ~~product~~ game group funded by the annuity. Annual payments after the initial payment must be made by the lottery on the anniversary date or if this date falls on a nonbusiness day, then the first business day following the anniversary date of the draw of the grand prize winning numbers.

7. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.
8. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-04-06. POWERBALL® ~~power~~ Power play promotion option.

1. The POWERBALL® ~~power play promotion option~~ is a limited extension of the POWERBALL® game and is conducted according to the ~~product game~~ group's game rules ~~and other applicable rules~~. The promotion option offers to the owner of a qualifying play a chance to multiply the amount of a set prize. A match 5 bonus prize is awarded independent of the power play option and is not multiplied by the power play multiplier.
2. A qualifying play is a single POWERBALL® play for which the player pays an extra one dollar for the power play option ~~play~~. Power play does not apply to the grand prize or a match 5 bonus prize.
3. A qualifying play which wins one of the eight ~~lump sum~~ set prizes will be multiplied by the number selected, two through five, in a separate random power play drawing.
4. A single number from a series of sixteen numbers is selected. The numbers are "2", "2", "2", "2", "3", "3", "3", "3", "4", "4", "4", "4", "5", "5", "5", and "5". The ~~product game~~ group may change one or more of the multiplier numbers for a special promotion.
5. ~~Except as provided by rule, a~~ A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying power play will pay the amounts shown below when matched with the power play number drawn:

POWERBALL® Pays Instead

<u>Matches per Play</u>	<u>Prize Amount</u>	<u>5X</u>	<u>4X</u>	<u>3X</u>	<u>2X</u>
5 white + 0 red	\$200,000	\$1,000,000	\$800,000	\$600,000	\$400,000
4 white + 1 red	\$10,000	\$50,000	\$40,000	\$30,000	\$20,000
4 white + 0 red	\$100	\$500	\$400	\$300	\$200
3 white + 1 red	\$100	\$500	\$400	\$300	\$200

3 white + 0 red	\$7	\$35	\$28	\$21	\$14
2 white + 1 red	\$7	\$35	\$28	\$21	\$14
1 white + 1 red	\$4	\$20	\$16	\$12	\$8
0 white + 1 red	\$3	\$15	\$12	\$9	\$6

Rarely, a set prize amount may be less than the amount shown. In that case, a power play prize will be a multiple of the new set prize amount. For example, if the match 5 set prize amount of two hundred thousand dollars becomes twenty-five thousand fifty dollars under the product game group's rules, a power play player winning that prize amount when a "5" has been drawn would win one hundred twenty-five thousand two hundred fifty dollars (\$25,050 x 5).

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

<u>Power Play</u>	<u>Probability of Prize Increase</u>
5X - Prize won times 5	1 in 4
4X - Prize won times 4	1 in 4
3X - Prize won times 3	1 in 4
2X - Prize won times 2	1 in 4

~~Power play does not apply to the grand prize or a match 5 bonus prize.~~

- ~~7. The lottery shall pay a power play prize in one lump sum.~~

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-05

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

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded.
2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the product game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.
3. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.
4. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.
5. An annuitized grand prize must be paid annually in twenty-five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

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

1. The triple sizzler option is a limited extension of the HOT LOTTO® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply the amount of a set prize.
2. A qualifying play is a single HOT LOTTO® play for which the player pays an extra one dollar for the triple sizzler option. The triple sizzler option does not apply to the grand prize. A qualifying play which wins one of the eight set prizes will be multiplied by three. The game group may change the multiplier number three for a special promotion.
3. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying triple sizzler play will pay the amounts shown below:

<u>Matches Per Play</u>	<u>Prize</u>	<u>3x</u>
<u>5 white + 0 orange</u>	<u>\$10,000</u>	<u>\$30,000</u>

<u>4 white + 1 orange</u>	<u>\$500</u>	<u>\$1,500</u>
<u>4 white + 0 orange</u>	<u>\$50</u>	<u>\$150</u>
<u>3 white + 1 orange</u>	<u>\$50</u>	<u>\$150</u>
<u>3 white + 0 orange</u>	<u>\$4</u>	<u>\$12</u>
<u>2 white + 1 orange</u>	<u>\$4</u>	<u>\$12</u>
<u>1 white + 1 orange</u>	<u>\$3</u>	<u>\$9</u>
<u>0 white + 1 orange</u>	<u>\$2</u>	<u>\$6</u>

History: Effective January 3, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-06

10-16-06-04. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty-five percent of each draw period's sales after the prize reserve account is funded.
2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the ~~product~~ game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw. A grand prize must be paid in cash in a single payment.
3. The prize pool percentage allocated to set prizes must be carried forward to the next draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.
4. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-07

10-16-07-01. Game description. To play 2BY2®, a player selects two different red numbers, between one and twenty-six, and two additional different white numbers, between one and twenty-six. The numbers for the second (white) set of two numbers may be the same as the numbers for the first (red) set of two numbers. The price of a play is one dollar. The grand prize is paid on a single-payment cash or single-payment cash pari-mutuel basis and a set prize (cash prize of one hundred dollars or less) is paid on a single-payment cash basis. Draws are held every Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday.

History: Effective November 8, 2005; amended effective February 22, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-07-02. Expected prize pool percentage and odds. The Except as provided by subsection 3 of section 10-16-07-03 or by section 10-16-07-04, the grand prize is twenty twenty-two thousand dollars. All prizes awarded must be paid as set cash prizes or free ticket prizes with the following expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
2 red + 2 white	Grand prize	38.90% <u>41.56%</u>	1:105,625
2 red + 1 white	\$100	9.34% <u>8.93%</u>	1:2,201
1 red + 2 white	\$100	9.34% <u>8.93%</u>	1:2,201
2 red + 0 white	\$3	1.61% <u>1.54%</u>	1:383
0 red + 2 white	\$3	1.61% <u>1.54%</u>	1:383
1 red + 1 white	\$3	13.44% <u>12.86%</u>	1:46
1 red + 0 white	Free ticket	12.88% <u>12.32%</u>	1:8
0 red + 1 white	Free ticket	12.88% <u>12.32%</u>	1:8

Overall odds of winning a prize on a one dollar play are 1:3.59.

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

History: Effective November 8, 2005; amended effective February 22, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-07-03. Prize pool and payment.

1. The prize pool for all prize categories must consist of ~~fifty~~ fifty-one percent of each draw period's sales after the prize reserve account is funded.
2. The prize pool percentage allocated to prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the prizes awarded in the current draw.
3. ~~The grand prize amount is twenty thousand dollars unless~~ If there are more than five ten grand prize winning plays contain the four winning grand prize numbers in a draw. Then, one hundred thousand dollars must be divided equally on a parimutuel basis based on the number of winning plays among the participating lotteries, the following applies:
 - a. For a draw on Sunday, Monday, Wednesday, Thursday, Friday, and Saturday, the maximum grand prize liability is two hundred twenty thousand dollars which is paid on a pari-mutuel basis among all grand prize winning plays.
 - b. For a draw on Tuesday, the maximum grand prize liability is four hundred forty thousand dollars which is paid on a pari-mutuel basis among the grand prize winning plays based on each type of prize. For example, if there are seven standard grand prize winning plays (\$22,000) and four Tuesday double grand prize winning plays (\$44,000), each standard winning play would be allocated \$20,000 and each Tuesday double grand prize winning play would be allocated \$40,000, computed as follows:

	<u>Standard Prize</u>	<u>Tuesday Double Prize</u>
<u>Value of each grand prize winning play</u>	<u>\$22,000</u>	<u>\$44,000</u>
<u>Number of grand prize winning plays</u>	<u>x7</u>	<u>x4</u>
<u>Total value of grand prize winning plays</u>	<u>\$154,000</u>	<u>\$176,000</u>
<u>Maximum number of grand prize winning plays</u>	<u>10</u>	
<u>Actual number of grand prize winning plays</u>	<u>11</u>	
<u>Ratio of maximum number to actual number</u>	<u>.909090</u>	<u>.909090</u>
<u>Total pari-mutuel amount available for prizes</u>	<u>\$140,000</u>	<u>\$160,000</u>
<u>Number of grand prize winning plays</u>	<u>÷7</u>	<u>÷4</u>
<u>Pari-mutuel amount of each winning play</u>	<u>\$20,000</u>	<u>\$40,000</u>

4. A "free ticket" prize must be a free quick pick 2BY2® ticket for the next upcoming draw.
5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

History: Effective November 8, 2005; amended effective February 22, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-07-04. Tuesday draw double prize feature. If a player purchases a subscription of a play for 91, 182, or 364 draws, including an extension, or multi-draw ticket of one or more plays for 7, 14, 21, 28, 35, or 42 consecutive draws, the value of the player's prize, including the grand prize, that is won on a Tuesday draw automatically doubles in value.

History: Effective February 22, 2008.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1.13

TITLE 30
GAME AND FISH DEPARTMENT

APRIL 2008

CHAPTER 30-02-08
ANTELOPE LICENSE RAFFLE

Section

<u>30-02-08-01</u>	<u>Procedures and Conditions</u>
<u>30-02-08-02</u>	<u>Accounting Statement</u>
<u>30-02-08-03</u>	<u>Financial Report</u>

30-02-08-01. Procedures and conditions. Before printing or distributing any raffle tickets, the North Dakota hunter educators' association shall submit to the director an overall plan of raffle procedures and program conditions for the director's approval. A detailed copy of guidelines for volunteers who are assisting in the sales of raffle tickets must also be submitted. Upon the director's approval, the North Dakota hunter educators' association must provide a copy of these guidelines to all volunteers before the volunteers are issued tickets for sale to the public. The raffle must be organized and conducted in accordance with North Dakota Century Code chapter 53-06.1 and North Dakota Administrative Code article 99-01.3.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-08-04.12

Law Implemented: NDCC 20.1-08-04.12

30-02-08-02. Accounting statement. The North Dakota hunter educators' association will provide the director with a detailed accounting statement within thirty days after the completion of the raffle drawing. This statement will include information regarding raffle expenses, gross and net raffle income, number of tickets sold and unsold, as well as documented proof that no more than ten percent of the gross raffle proceeds were used to promote the raffle.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-08-04.12

Law Implemented: NDCC 20.1-08-04.12

30-02-08-03. Financial report. The North Dakota hunter educators' association will provide the director with an annual financial report for all projects funded with raffle proceeds and the balance of unspent funds.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-08-04.12

Law Implemented: NDCC 20.1-08-04.12

ARTICLE 30-03

FISHERY MANAGEMENT

Chapter	
30-03-01	Bait Vendors [Repealed]
30-03-01.1	Bait Vendors
30-03-02	Private Fish Hatcheries
30-03-03	Construction and Use of Fishhouses for Winter Fishing
30-03-04	Commercial Frog Licenses
30-03-05	Fishing Contests
30-03-06	Aquatic Nuisance Species

CHAPTER 30-03-01

BAIT VENDORS

[Repealed effective April 1, 2008]

CHAPTER 30-03-01.1
BAIT VENDORS

<u>Section</u>	
<u>30-03-01.1-01</u>	<u>License Required to Be Displayed</u>
<u>30-03-01.1-02</u>	<u>Bait Definitions</u>
<u>30-03-01.1-03</u>	<u>Baitfish Species Permitted</u>
<u>30-03-01.1-04</u>	<u>License Limitations</u>
<u>30-03-01.1-05</u>	<u>Assistants Covered by License</u>
<u>30-03-01.1-06</u>	<u>Quantity Requiring License</u>
<u>30-03-01.1-07</u>	<u>Equipment for Holding and Transport</u>
<u>30-03-01.1-08</u>	<u>Interstate Transport</u>
<u>30-03-01.1-09</u>	<u>Transportation of Bait With Aquatic Vegetation Within the State</u>
<u>30-03-01.1-10</u>	<u>Transportation of Bait in Water Within the State</u>
<u>30-03-01.1-11</u>	<u>Stocking</u>
<u>30-03-01.1-12</u>	<u>Equipment for Taking Legal Live Baitfish and Processed Baitfish</u>
<u>30-03-01.1-13</u>	<u>Prohibited Waters for Taking Live Bait</u>
<u>30-03-01.1-14</u>	<u>Wholesale Bait Pond</u>
<u>30-03-01.1-15</u>	<u>Inspections and Records</u>
<u>30-03-01.1-16</u>	<u>Violations and Penalties</u>

30-03-01.1-01. License required to be displayed. All licenses must be publicly displayed on the business premises. Business names must be displayed on any vehicle used to transport live bait. Licenses will be issued on a calendar year basis.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01.1-02. Bait definitions. As used in this chapter:

1. The term "legal live baitfish" means fathead minnow, stickleback, creek chub, and white sucker.
2. The term "live bait" includes all fishes, amphibians, insects, or other invertebrates.
3. The term "processed baitfish" means fathead minnow, stickleback, creek chub, white sucker, rainbow smelt, and lake herring (cisco) that have been preserved by freezing, salting, or otherwise treated to inactivate sexual products.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01.1-03. Baitfish species permitted. A licensee may possess only legal live baitfish or processed baitfish. Fish species other than those to be used as legal live baitfish and processed baitfish caught while seining or trapping must be returned to the water immediately.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-04. License limitations. Retail or wholesale bait vendor licenses are issued for a calendar year to one person only. The holder of a retail bait vendor license may sell live bait at retail only, at one specified selling location per license. A wholesale bait vendor may only sell live bait to licensed bait vendors. Both a retail license and a wholesale license are necessary to sell live bait at both retail and wholesale. A wholesale licensee may not act as an agent or assistant under the license of another wholesaler.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-05. Assistants covered by license. A licensed wholesale bait vendor may employ the assistance of up to six other persons to capture or sell and transport live bait in the manner approved by the director. All assistants must have in their possession department-issued documentation. The licensee is responsible for the actions of employees, including all agents or assistants acting under the licensee's license. No one who has had a department-issued license revoked or suspended within three years may act as an agent or assistant.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-06. Quantity requiring license. Possession of more than five gallons of rainbow smelt (must be dead), or more than one hundred fifty legal live baitfish, or more than twenty-four live crayfish, or more than twenty-four live frogs, or more than twenty-four live salamanders shall require a retail or wholesale license.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-07. Equipment for holding and transport. Persons commercializing in or transporting live bait shall use equipment capable of maintaining such live bait in a healthy and lively condition at all times. Each species of legal live baitfish must be kept separate from other species of legal live baitfish in holding and transport equipment. The premises and equipment of all persons commercializing in live bait shall be open to the inspection of the director or any of the director's duly appointed agents at any time. All licensees' equipment

used for transporting live bait into or within the state, including bedding (medium), must be free of aquatic nuisance species. Water used to transport live bait into the state must be from a potable or ground water (well) source and shall not contain any aquatic vegetation. Retail bait vendors must keep all aquatic vegetation and aquatic nuisance species out of bait tanks at their point of sale.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14, 20.1-17-01

Law Implemented: NDCC 20.1-06-14, 20.1-17-01, 20.1-17-06

30-03-01.1-08. Interstate transport. It is illegal to import fathead minnows or stickleback into the state. It is illegal to import other live baitfish or live bait into the state except with a permit issued by the director and only in the manner approved by the director. It is illegal to export live bait out of the state except with a permit issued by the director and only in the manner approved by the director. It is illegal to transport live baitfish through the state except with a permit issued by the director and only in the manner approved by the director. Permit applications must be received by the director a minimum of forty-eight hours prior to any planned import or export of live bait. Transportation of bait without the proper permits is a class B misdemeanor and may result in the revocation of the vendor's license.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01.1-09. Transportation of bait with aquatic vegetation within the state. It is illegal to transport bait within the state with aquatic vegetation, or parts thereof, or aquatic nuisance species except with an appropriate license or permit issued by the director and only in the manner approved by the director.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-01, 20.1-17-06

30-03-01.1-10. Transportation of bait in water within the state. It is illegal to transport aquatic bait in water within the state except with an appropriate license or permit issued by the director and only in the manner approved by the director.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-01, 20.1-17-06

30-03-01.1-11. Stocking. Stocking of any live fish, live fish eggs, live amphibians, or other live aquatic organism into any waters of the state shall be

illegal except with the appropriate license or permit issued by the director. Violation of this section is a class B misdemeanor.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01.1-12. Equipment for taking legal live baitfish and processed baitfish. A person possessing only a retail license may take legal live baitfish and processed baitfish with a seine not exceeding twenty-five feet [7.6 meters] in length and six feet [1.8 meters] in depth or with traps not larger than thirty inches [76 centimeters] in length, and twelve inches [30.5 centimeters] in diameter, with a throat opening not to exceed one and three-quarter inches [4.445 centimeters] in diameter. The mesh size of both seine and traps shall not exceed three-eighths inch [9.5 millimeters] square measure.

A person possessing the appropriate wholesale license may take legal live baitfish and processed baitfish with fish traps less than five feet [1.5 meters] in any dimension. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure and the throat opening shall be less than three inches [76.2 millimeters] in diameter or width. A valid tag issued by the department must be attached to each trap. Seines used by a licensed wholesaler shall be restricted to those less than two hundred fifty feet [76 meters] in length and fourteen feet [4.25 meters] in depth. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure. A tag issued by the department must be affixed to each seine used by the licensee.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-04

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

1. Waters managed as recreational fisheries;
2. Waters designated by the department as infested with prohibited or regulated aquatic nuisance species;
3. The United States fish and wildlife service's wildlife development areas, waterfowl production areas, or refuges; or
4. The department's wildlife management areas.

Refer to the current fishing proclamation for commercial season and other restrictions for harvesting leeches by licensed bait dealers.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14, 20.1-17-01

Law Implemented: NDCC 20.1-06-04, 20.1-17-01, 20.1-17-06

30-03-01.1-14. Wholesale bait pond. The term "wholesale bait pond" means any pond used to take live bait for wholesale. A legal description, to the quarter section, of each wholesale bait pond must be listed on the wholesaler's application and all locations must be approved by the director before a license is issued.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

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

History: Effective April 1, 2008.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01.1-16. Violations and penalties. Any retail or wholesale bait vendor who violates any section of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a one hundred dollar fee. The violation may result in license revocation. No one who has had a department-issued bait vendor license revoked or suspended within three years may obtain a license or be an assistant for another licensee.

History: Effective April 1, 2008.

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

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

CHAPTER 30-03-02

30-03-02-06. ~~Out-of-state transportation~~ Transportation. Transportation of authorized fish stock into ~~or~~, out of, or within the state by a licensed hatchery operator ~~for commercialization~~ in a private fish hatchery may be done ~~if the fish stock is only with a permit issued by the director and only in the manner approved by the director.~~ All fish stock entering the state must be accompanied by disease-free certification and a bill of sale from the vendor. Disease-free certification will be species specific as warranted by the department.

History: Amended effective April 1, 2008.

General Authority: NDCC 20.1-06-12

Law Implemented: NDCC 20.1-06-12

30-03-02-10. Use of seines and nets. The operator of a licensed fish hatchery may use seines and netting nets in the operator's hatchery operation if the equipment is authorized by the director of the game and fish department. ~~Meta~~tags Tags, issued with the authorization for each piece of equipment, must be attached to the equipment.

History: Amended effective April 1, 2008.

General Authority: NDCC 20.1-06-12

Law Implemented: NDCC 20.1-06-12

30-03-02-11. Removal from ponds. Fish which has been stocked by a licensed hatchery operator for private, nonhatchery use in private ponds may be removed by angling with hook and line, or may be removed by a licensed fish hatchery operator possessing authorization from the director of the game and fish department to do so. The maximum number of ponds from which a fish hatchery operator may contract to remove fish is ~~one hundred~~ twenty ponds.

History: Amended effective April 1, 2008.

General Authority: NDCC 20.1-06-12

Law Implemented: NDCC 20.1-06-12

30-03-02-12. Equipment for transport. All equipment used for transporting fish to and from a private fish hatchery must be free of aquatic vegetation and aquatic nuisance species and all equipment is subject to periodic inspection by a duly appointed agent of the director.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-01, 20.1-17-06

30-03-02-13. Illegal waters for private fish hatcheries. Private fish hatcheries shall not be permitted on the following:

1. Waters managed as recreational fisheries;

2. Waters designated by the department as infested with prohibited or regulated aquatic nuisance species;
3. The department's wildlife management areas; or
4. The United States fish and wildlife service's wildlife development areas, waterfowl production areas, or refuges.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-01, 20.1-17-05, 20.1-17-06

CHAPTER 30-03-06
AQUATIC NUISANCE SPECIES

<u>Section</u>	
<u>30-03-06-01</u>	<u>Equipment</u>
<u>30-03-06-02</u>	<u>Aquatic Vegetation Definition</u>
<u>30-03-06-03</u>	<u>Aquatic Vegetation Prohibited</u>
<u>30-03-06-04</u>	<u>Aquatic Vegetation Transport</u>
<u>30-03-06-05</u>	<u>Water Prohibited</u>
<u>30-03-06-06</u>	<u>Inspections</u>
<u>30-03-06-07</u>	<u>Penalty</u>

30-03-06-01. Equipment. Upon leaving any water body or while in transit, all watercraft, watercraft motors, watercraft trailers, and recreational and commercial equipment used in fishing, hunting, and watercrafting or construction equipment shall be free of prohibited or regulated aquatic nuisance species, as defined in the state's aquatic nuisance species list. All equipment is subject to inspection by a duly appointed agent of the director.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-17-01
Law Implemented: NDCC 20.1-17-04

30-03-06-02. Aquatic vegetation definition. Aquatic vegetation includes all obligate submergent species of aquatic plants.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-17-01
Law Implemented: NDCC 20.1-17-06

30-03-06-03. Aquatic vegetation prohibited. No aquatic vegetation, or parts thereof, shall be in or on watercraft, watercraft motors, watercraft trailers, and recreational, commercial, or construction equipment when out of water. Watercraft and recreational, commercial, or construction equipment on lifts suspended above the water from which they originated are excluded. Time out of the water needed to clean aquatic vegetation from the watercraft, watercraft motors, watercraft trailers, and recreational, commercial, or construction equipment at the immediate water access area (e.g., boat ramp) is allowed. All built-in structures to boats, including livewells and bait compartments and containers used to transport legal live bait, must be free of aquatic vegetation.

History: Effective April 1, 2008.
General Authority: NDCC 20.1-17-01
Law Implemented: NDCC 20.1-17-06

30-03-06-04. Aquatic vegetation transport. No person may transport any aquatic vegetation to or from any waters of the state without approval from the director. No person may transport any aquatic vegetation into the state.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-06

30-03-06-05. Water prohibited. All water must be drained from watercraft and recreational, commercial, and construction equipment bilges and confined spaces when out of water and upon entering the state. Water used for transportation of fish in watercraft livewells and bait buckets within the state is excluded. Potable and sewage water is excluded.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-06

30-03-06-06. Inspections. Operators and haulers of all watercraft and recreational, commercial, or construction equipment must inspect their equipment for aquatic nuisance species when removed from waters of the state or upon entering the state. If present, the aquatic nuisance species must be physically removed immediately.

History: Effective April 1, 2008.

General Authority: NDCC 20.1-17-01

Law Implemented: NDCC 20.1-17-04

30-03-06-07. Penalty. Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2008.

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

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

TITLE 38
HIGHWAY PATROL

APRIL 2008

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 385 - Subpart C - Certification of Safety Auditors, Safety Investigators, and Safety Inspectors.
3. Part 385 - Subpart D - New Entrant Safety Assurance Program.
4. Part 385 - Subpart E - Hazardous Materials Safety Permits.
5. Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
- ~~3.~~ 6. Part 390 - Federal Motor Carrier Safety Regulations: General.
- ~~4.~~ 7. Part 391 - Qualifications of Drivers.
- ~~5.~~ 8. Part 392 - Driving of Motor Vehicles.
- ~~6.~~ 9. Part 393 - Parts and Accessories Necessary for Safe Operation.
- ~~7.~~ 10. Part 395 - Hours of Service of Drivers.
- ~~8.~~ 11. Part 396 - Inspection, Repair and Maintenance.
- ~~9.~~ 12. 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; April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-46

CHAPTER 38-06-02

38-06-02-01. General rules.

1. The North Dakota highway patrol may issue annual permits for the movement of overwidth vehicles and loads and single trip permits for the movement of oversize or overweight, or both, vehicles and loads. Unless otherwise exempted by the superintendent, permits will not be issued for loads that can be reasonably made to conform to legal limits.
2. All ~~single trip~~ permits must be in possession of the permittee prior to starting movement unless prior approval is obtained from the highway patrol.
3. Single trip permits includes self-issuing single trip movement approval forms.

History: Effective January 1, 1988; amended effective January 1, 1992; April 1, 2008.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

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

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

3. The towing vehicle must have two outside mirrors, one on each side, to reflect a rear view of two hundred feet [60.96 meters] to the driver.

History: Effective January 1, 1988; amended effective February 1, 1999; April 1, 2008.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-05. Insurance requirements.

1. When towing or hauling oversize mobile home or modular units, the towing vehicle must have minimum insurance coverage of one hundred thousand dollars bodily injury liability for one person, three hundred thousand dollars bodily injury liability for one accident, and fifty thousand dollars property damage liability.
2. When requesting permits for movements exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight, or when otherwise required by the highway patrol or department of transportation engineers, the applicant must provide written verification of liability and property damage insurance coverage.
3. An insurance bond in the amount determined by the North Dakota department of transportation may be required for load or vehicle movements of excessive size or weight, showing the North Dakota department of transportation as an additional insured. Excessive size and weight shall be determined on a case-by-case basis by the North Dakota department of transportation.

History: Effective January 1, 1988; amended effective January 1, 1992; April 1, 2008.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

38-06-02-07. Travel restrictions.

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

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

History: Effective January 1, 1988; amended effective August 1, 1993; February 1, 1999; April 1, 2008.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

CHAPTER 38-06-03

38-06-03-01. Permit fees. The following fees are 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 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~~ fifty cents per mile [kilometer] and ~~thirty~~ fifty dollars per hour.
7. The fee for an equipment approval certificate is fifteen dollars.

History: Effective January 1, 1988; amended effective May 1, 1988; January 1, 1992; August 1, 1993; February 1, 1999; February 1, 2000; April 1, 2008.

General Authority: NDCC 39-12-02, 39-12-04, 39-12-05.3

Law Implemented: NDCC 39-12-02, 39-12-04, 39-12-05.3

CHAPTER 38-08-01

38-08-01-01. Application for course approval. A sponsoring agency which proposes to offer a motor vehicle ~~accident~~ crash prevention course to the public qualifying for an insurance premium reduction shall submit a completed application to the superintendent of the North Dakota highway patrol on a form prescribed by the department.

History: Effective December 1, 1988; amended effective April 1, 2008.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

38-08-01-02. Course and instructors. In addition to the information required to be entered upon the application, the application must be accompanied by the following:

1. Copy A written copy of the proposed motor vehicle ~~accident~~ crash prevention course, which if approved, will be presented in a classroom setting or self-study. must be maintained on file at highway patrol headquarters.
2. An electronic demonstration copy of the proposed motor vehicle crash prevention course, which if approved, will be presented via the internet. A copy must be maintained on file at highway patrol headquarters.
3. Names, addresses, and ~~North Dakota driver~~ driver's license numbers of all instructors providing classroom instruction. Instructors must be formally certified to teach the courses. Documentation attesting to instructor certification must be submitted to the superintendent.

History: Effective December 1, 1988; amended effective April 1, 2008.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

CHAPTER 38-08-02

38-08-02-01. Hours of classroom instruction. The curriculum for a course in motor vehicle ~~accident~~ crash prevention must consist of a minimum of four hours of ~~classroom~~ instruction and must be designed consistent with the following subject matter and be structured to prepare a student for satisfactory completion.

History: Effective December 1, 1988; amended effective April 1, 2008.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

38-08-02-02. Course curriculum. The curriculum must include, but not be limited to, the following subject matter:

1. The concept of ~~accident~~ crash preventability, including a discussion of the cost magnitude of traffic ~~accident problems~~ crashes.
2. ~~Techniques for defensive driving and coping with critical situations including~~ Discussion concerning the following contributing factors involved in motor vehicle crashes:
 - a. ~~Interpret critical events that require evasive action~~ Appropriate responses to roadway departure incidents;
 - b. ~~Appropriate response to situations caused by vehicle failure (blowout, brake failure, etc.); and~~ Benefits associated with the proper use of safety restraints;
 - c. ~~The risk factors created by a variety of psychological, social, and physical factors that can facilitate or inhibit function required in driving including:~~ Impact of alcohol and drug use among drivers:
 - (1) ~~Effects and compensatory measures concerning the relationships between alcohol or any other drugs or medication, or both, and driving performance.~~
 - (2) ~~Negative stresses and compensatory measures associated with physical, mental, and social conditions as they relate to driver performance.~~
 - (3) ~~Age-related physical changes of drivers fifty-five years of age and older.~~
 - d. Problems associated with younger or older drivers; and
 - e. Negative consequences associated with aggressive driving.

3. ~~North Dakota traffic~~ Traffic laws and regulations, vehicle dynamics, capabilities and limitations, and highway environmental factors, including:
 - a. Traffic laws and regulations:
 - (1) Signs, signals, and markings.
 - (2) Right-of-way requirements.
 - (3) Speed.
 - b. Vehicle capabilities:
 - (1) Stopping distance.
 - (2) Passing.
 - c. Highway ~~setting or operating environment and adverse conditions~~ environmental factors:
 - (1) Conditions limited by illumination, obstructions, and weather.
 - (2) Conditions ~~limited~~ created by snow, ice, and rain.

History: Effective December 1, 1988; amended effective April 1, 2008.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

CHAPTER 38-08-03

38-08-03-01. Withdrawal of approval. The superintendent may withdraw approval of a sponsoring agency of a motor vehicle ~~accident~~ crash prevention course for any of the following reasons:

1. Unapproved deletions or additions have been made to the curriculum previously approved. Courses approved as classroom courses may format the approved course for self-study or online internet use, provided the requirements of subsection 2 of section 38-08-01-02 have been met.
2. The course is not administered in a satisfactory manner ~~and~~ or after evaluation proves ineffective.
3. The sponsoring agency failed to maintain compliance with any of the provisions of this article.

History: Effective December 1, 1988; amended effective April 1, 2008.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

CHAPTER 38-08-04

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

1. Make application to the ~~administration~~ department for approval if there are any proposed additions or deletions to an approved course.
2. Perform all administrative functions in connection with the course.
3. Upon satisfactory completion of the course, provide each participant with a certificate of course completion approved by the superintendent. Completion records must be maintained for a period of three years from the course completion date.
4. Provide ~~or train, or both,~~ approved instructors to ~~conduct~~ provide presentations for classroom courses ~~qualifying for insurance premium reduction.~~
5. ~~Conduct~~ Provide the same course ~~in accordance with the description represented to the superintendent of instruction that is submitted to the superintendent at the time of application for course approval.~~
6. Provide each participant at the time of enrollment an approved ~~printed~~ statement, either printed or in electronic format, that indicates an insurer may provide a reduction in premium charges for motor vehicle personal injury and property damage to an insured for at least a two-year period following the participant's successful completion of a motor vehicle ~~accident~~ crash prevention course. A driver fifty-five years of age or older who successfully completes an approved motor vehicle ~~accident~~ crash prevention course is entitled to a three-year insurance premium reduction.
7. Provide the superintendent, upon request, ~~with~~ a schedule of ~~class~~ classroom courses, to include the dates, times, and locations of classroom courses.
8. Authorize the superintendent to audit the records of the approved course and to monitor and evaluate any and all portions of the course, including the classroom facility, ~~use of instructional material, and the presentation of the course~~ self-study materials, and online materials presented via internet-based courses. An internet course provider will provide the superintendent a course access password at no charge, upon request.

9. Upon renewal of an approved course, the course must be updated to accommodate any amendments that have been made to this article within the period of the current course approval.

History: Effective December 1, 1988; amended effective February 1, 1999; April 1, 2008.

General Authority: NDCC 26.1-25-04.1

Law Implemented: NDCC 26.1-25-04.1

TITLE 69
PUBLIC SERVICE COMMISSION

APRIL 2008

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~October 1, 2005~~ December 31, 2006, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

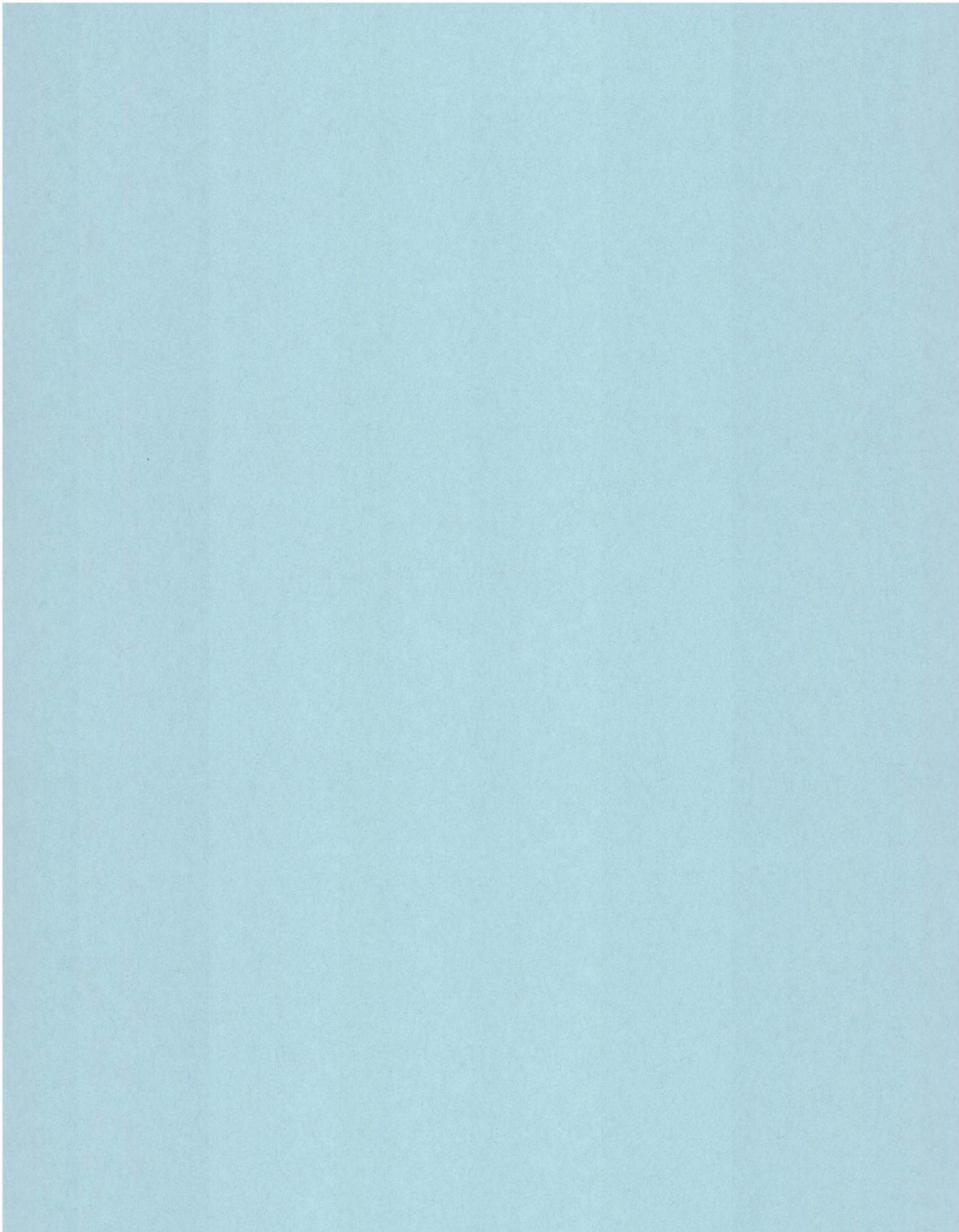
Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

TITLE 70
REAL ESTATE COMMISSION



APRIL 2008

CHAPTER 70-01-01

70-01-01-01. Organization of real estate commission.

1. **History and functions.** The 1957 legislative assembly passed a real estate licensing law, codified as North Dakota Century Code chapter 43-23. This chapter requires the governor to appoint a state real estate commission. It is the responsibility of the commission to administer the real estate license law regarding brokers and salespersons and to regulate the sale of out-of-state subdivided lands offered for sale to residents of North Dakota. In addition, the commission is required to administer a real estate education, research, and recovery fund whereby aggrieved persons may make application for the payment of unsatisfied judgments.
2. **Commission membership.** The commission consists of five members, three of whom are active real estate brokers, appointed by the governor. Members of the commission are appointed for a term of five years, staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor appoints a successor for a term of five years.
3. **~~Secretary-treasurer~~ Executive director.** The ~~secretary-treasurer~~ executive director of the commission is employed by the commission and is responsible for administration of the commission's activities.
4. **Inquiries.** Inquiries regarding the commission may be addressed to the ~~secretary-treasurer~~ executive director:

North Dakota Real Estate Commission
P.O. Box 727
Bismarck, ND 58502-0727

History: Amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC ~~28-32-02.1~~ 28-32-02

Law Implemented: NDCC ~~28-32-02.1~~ 43-23-03

CHAPTER 70-02-01

70-02-01-02. Application for license.

1. No application for either a broker's or salesperson's license will be accepted from a person under the age of eighteen years.
2. All applications must be filed with the commission before an examination, complete in every detail with every question answered and correct fees sent with the application.
3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 2 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesperson for at least two years.

"Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesperson. The foregoing shall be certified by a licensed real estate broker.

4. Each application for license shall be made on application forms provided by the real estate commission and are to be filled in personally by, or under the supervision of, the applicant.
5. After an application is filed, no refund of application fee will be made to any applicant.
6. The commission may deny any application for license when one or more of the following conditions are present:
 - a. The application contains any false statement.
 - b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.
 - c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.
 - d. The applicant has had a license suspended or revoked in another state.
 - e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.

- f. The applicant has issued one or more checks or drafts which have been dishonored by a payor bank because:
 - (1) No account exists;
 - (2) The account was closed; or
 - (3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.
9. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.
7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.
8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.
9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.
10. When a corporation submits its application for a license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.
11. When a partnership submits its application for a license, the application must be accompanied by a copy of the partnership agreement.
12. An applicant for licensure in another state may request the commission to certify to such other state that the applicant is a licensee of this state. A fee as set by the commission shall accompany the request.
13. An application for an organization to be licensed as a salesperson or broker associate pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than two hundred dollars, as set by the commission. The individual who owns the organization must possess and maintain a valid and active real estate license in order for the organization to be licensed. The failure to do so will cause the organization's license to become

inactive and invalid. The one-time fee must be paid each time the organization's license is activated.

History: Amended effective August 1, 1981; May 1, 1986; January 1, 1992; February 1, 2004; January 1, 2006; April 1, 2008.

General Authority: NDCC 28-32-02, ~~43-23-08(7)~~ 43-23-08(6)

Law Implemented: NDCC ~~43-23-05~~ 43-23-05.1, 43-23-08, 43-23-09, 43-23-11.1

70-02-01-03. Examinations.

1. An applicant will not be permitted to take the written examination until and unless the applicant has been authorized in writing to appear for the examination.
2. If an applicant should fail to appear for examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must reapply for examination as in the first instance and pay the required fee.
3. ~~Broker or salesperson applicants who fail an examination and wish to rewrite the examination must submit a rewrite application and fee.~~
4. During the examination the use or possession of any unfair methods or notes, the giving or receiving of aid of any kind, or the failure to obey instructions will result in a denial of the application and license.
5. ~~4.~~ If the ~~broker or salesperson~~ applicant passes one portion of the examination, national or state, the salesperson applicant shall not be required to repeat that portion of the examination if the that applicant passes the remaining portion within twelve months from the date of the first examination. ~~Applicant~~ An applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.
5. A broker applicant must pass the broker examination within twelve months from the date of the first examination. An applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.

History: Amended effective January 1, 1992; February 1, 2004; April 1, 2008.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-13(4)

70-02-01-06. Nonresident brokers and salespersons.

1. Any person who becomes an applicant for a nonresident license shall become subject to the same rules required of an applicant whose residence is in North Dakota.

2. An applicant for nonresident broker's or salesperson's license shall hold a currently valid broker's or salesperson's license in the state of the applicant's domicile and that state shall certify that the applicant is in good standing and no complaints are pending.
3. A nonresident broker must maintain an active place of business as a real estate broker in the state of the broker's residence. The nonresident broker shall furnish proof of maintaining an active place of business by submitting ~~a photostatic copy of the broker's license and any further information deemed necessary by the commission.~~
4. North Dakota will not recognize the licensee from another state unless an agreement granting reciprocal privileges to North Dakota licensees has been made by the commission with the proper regulatory authorities of that state. The agreement shall set out the terms and the regulations to be followed.
5. An applicant currently licensed in a nonreciprocal state who has successfully passed the real estate licensing examination given in another state need only take the state portion of the examination in North Dakota.

History: Amended effective May 1, 1986; January 1, 1992; April 1, 2008.

General Authority: NDCC 28-32-02, ~~43-23-08(7)~~ 43-23-08(6)

Law Implemented: NDCC 43-23-10

CHAPTER 70-02-03

70-02-03-01. Application of code of ethics licensee responsibilities.

The commission shall have the power to investigate and to suspend or revoke a broker's or salesperson's license upon violation by a licensee of any provisions of the code of ethics licensee responsibilities.

History: Amended effective January 1, 1992; April 1, 2008.

General Authority: NDCC ~~43-23-11.1(1)~~ 28-32-02

Law Implemented: NDCC 43-23-11.1(1)

70-02-03-02.1. Advertising.

1. ~~All advertising by a real estate broker must be advertised only under the exact name of the broker as licensed or under the broker's trade name as registered with the commission. No advertisement may be permitted which sets forth only a post-office box number, telephone number, or street address, or any combination thereof.~~ Definition. As used in this section, the terms "advertise", "advertising", and "advertisement" include all forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the internet, the world wide web, electronic mail, electronic bulletin board, or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages.
2. Trade name. Advertising must be done in the real estate brokerage agency's trade name as licensed with the commission and the trade name must be prominently displayed.
3. Contact information. Advertising must include information on how the public can contact the real estate brokerage agency.
4. Advertising by licensees. Advertising by licensees must be under the supervision of the designated broker. Such advertising may include a licensee's name and telephone number or other contact information, provided the real estate brokerage agency's registered business name or trade name and contact information are also clearly included as required in this section.
5. Deception and misrepresentation prohibited. Advertising and promotion must be free from deception and shall not misrepresent the terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

6. A real estate broker may advertise, in the licensee's own name, property which is owned by the licensee, provided that immediately following the licensee's name where it appears in the advertisement, the words "Owner/Licensed Broker" must also appear. The provisions of this subsection apply both to active broker licensees and licensees whose license is on an inactive status. ~~Disclosure of the individual's status as a broker is required on all promotional and advertising materials in which the licensee's name appears.~~
2. ~~All advertising by a real estate salesperson must be advertised only under the exact name of the licensee as licensed.~~
7. A real estate salesperson may advertise in that person's own name property which is owned by the salesperson, provided that immediately following the name where it appears in the advertisement, the words "Owner/Licensed Salesperson" must also appear. The provisions of this subsection apply both to active salesperson licensees and licensees whose license is on an inactive status. ~~Disclosure of the individual's status as a salesperson is required on all promotional and advertising material in which that person's name appears.~~

History: Effective January 1, 1992; amended effective February 1, 2004; April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-11.1(1)

70-02-03-07. Closing statements. In every real estate sales transaction wherein the closing is handled by an attorney, bank, savings and loan association, or similarly recognized individual or group other than a real estate broker, it shall be the responsibility of the broker involved to see ~~that both the seller and the buyer~~ the party or parties represented by the broker receive a complete, detailed closing statement showing all of the receipts and disbursements handled in such transaction. The broker must retain true copies of such statements in the broker's files.

History: Amended effective April 1, 2008.

General Authority: NDCC ~~43-23-11.1(1)~~ 28-32-02

Law Implemented: NDCC ~~43-23-11.1(1)~~ 43-23-11.1(1)(o)

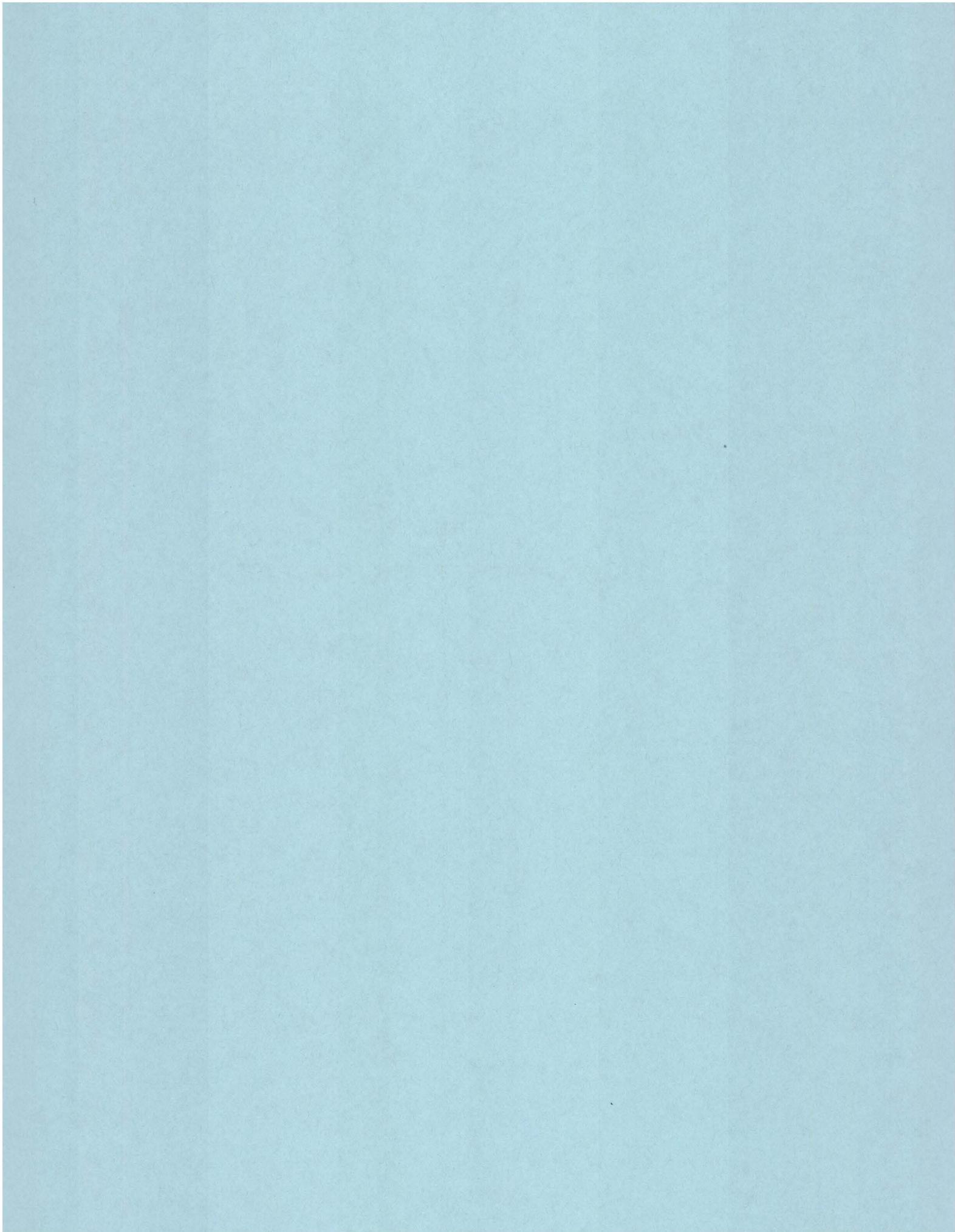
70-02-03-10. For sale signs. No signs shall be placed on any property for its sale or lease without the consent of the owner, or the owner's duly authorized agent ~~or fiduciary.~~

History: Amended effective April 1, 2008.

General Authority: NDCC ~~43-23-11.1(1)~~ 28-32-02

Law Implemented: NDCC 43-23-11.1(1)

TITLE 71
PUBLIC EMPLOYEES RETIREMENT SYSTEM



APRIL 2008

CHAPTER 71-01-02

71-01-02-02. Eligible voters.

1. ~~All active employees of the state of North Dakota and political subdivisions which participate in the North Dakota public employees retirement system, eligible to serve as elected members of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03,~~ are eligible to cast one vote for each active member vacancy on the retirement board.
2. All persons receiving retirement benefits or who are eligible to receive deferred vested retirement benefits are eligible to cast one vote for a retiree member vacancy on the retirement board.
3. Persons participating in the health insurance program but not in the retirement system are ineligible to cast votes in retirement board elections.

History: Effective April 1, 1992; amended effective July 1, 1994; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

71-01-02-03. Candidate eligibility.

1. Any active employee of ~~a department of the state of North Dakota, or a political subdivision, who participates in the North Dakota public employees retirement system, eligible to serve as an elected member of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03,~~ may become a candidate for election to the board. A department or political subdivision may not be represented by more than one elected member.
2. Any person, as of ~~the first day of July~~ April fifteenth of the election year, who ~~is receiving~~ has accepted a retirement benefit allowance or who is

eligible to receive deferred vested retirement benefits, may become a candidate for the retiree member to the board.

History: Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter and any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions. The director shall ensure that notification of the vacancy of a retiree member and the election is given to all persons receiving who have accepted a retirement benefits allowance or who are eligible to receive deferred vested retirement benefits through publication of a notice in the North Dakota public employees retirement system newsletter and any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions.
2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-05. Petition format.

1. The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters, ~~as determined by the current North Dakota public employees retirement system's membership role and their mailing addresses.~~ The nomination petition for the retiree member on the board must include the signature of at least twenty-five persons receiving a retirement allowance or who are eligible to receive a deferred vested retirement benefits, ~~as determined by North Dakota public employees retirement system's retirement membership role and their mailing addresses~~ allowance.
2. The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate _____ for election to the North Dakota Public Employees Retirement System board."

3. The nomination petition must include a certification by the candidate, as follows: "I accept the nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board."
4. If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

History: Effective April 1, 1992; amended effective May 1, 2004; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-06. Procedure for completing and filing petitions.

1. No public service or funds period of time, on which an employee is entitled to receive wages or salary from the state of North Dakota or a political subdivision, may be used by the candidates to promote their election except as permitted by the employing agency. In addition, no public funds may be used for the purpose of promoting an election unless permitted by the employing agency.
2. Nomination petitions must be filed with the North Dakota public employees retirement system no later than four p.m. on the first Friday of May and must be validated by the election committee or their representatives following the filing deadline and prior to ballots being distributed.
3. Nomination petitions not furnished by the North Dakota public employees retirement system will be accepted provided they are submitted in the prescribed form.
4. A candidate may withdraw that candidate's nomination petition up until the time one week prior to the date the ballots are printed. The notice must be in writing and duly witnessed.
5. Nomination petitions may be accompanied by a three-inch [76.20-millimeter] by five-inch [127.00-millimeter] photograph of the candidate and a narrative not to exceed two hundred words. ~~The narrative must be signed to be valid.~~ The absence of a photo or narrative will not invalidate the candidate's eligibility, but only the candidate's name will then appear with the other candidates' information that accompanies the ballots.

6. The retirement board or its representative reserves the right to edit lengthy narratives to the two hundred word limit. ~~Board decisions are final.~~
7. The board or its representative shall inform all candidates of the validation of their candidacy ~~by first-class United States mail.~~

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-07. Election ballots.

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a narrative on candidates who have provided that information ~~to the North Dakota public employees retirement system.~~
3. Ballots must first be arranged with the names of each candidate on the ballot, ~~in an order determined by lot.~~ In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.
4. If there is only one candidate for an election, the election will nonetheless be conducted in compliance with the provisions of this chapter.
5. If there is no candidate, the board shall solicit at least two persons from the eligible pool of candidates to run for election to the board. The election will then be conducted in compliance with the provisions of this chapter.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-08. Election.

1. Ballots must be mailed by first-class United States mail to the home address of all eligible active voters for an election of an active board

member, or all eligible retired voters for an election of a retired board member, ~~who are actively at work or retired~~ as determined by the North Dakota public employees retirement system's membership roles as of April fifteenth in the year of the election.

2. North Dakota public employees retirement system members who become eligible to vote after April fifteenth, but before the deadline for the receipt of ballots, may be issued a special election ballot by making their request for such ballot in writing to the North Dakota public employees retirement system office no later than the second Monday in June.
3. Ballots must be returned to the North Dakota public employees retirement system office no later than the close of business on the Friday immediately preceding the third Monday in June.
4. The candidate receiving the highest number of votes must be considered elected. When there is more than one active member board vacancy to be filled, the candidate with the second highest number of votes must be considered elected. If there are three active member board vacancies to be filled, the person with the third highest number of votes must be considered elected.

History: Effective April 1, 1992; amended effective April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-09. Canvassing rules.

1. Ballot counting by election committee members or their authorized representatives will commence at nine a.m. on the third Monday of June and will continue until complete.
2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.
3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.
4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments

of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.

5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.
6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.
7. Tie votes will be determined by a roll of two dice by each of the tied candidates; the successful candidate must have the highest total coin toss. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.

History: Effective April 1, 1992; amended effective April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-10. Notification of election results.

1. Election results must be presented to the retirement board following the canvassing of votes. Such report must include an itemization of the number of ballots returned, votes cast for each candidate, votes invalidated, and votes not counted due to late receipt.
2. All candidates will be notified of the election results ~~by mailing a copy of the election report by first-class United States mail~~ no later than the business day following the June meeting of the retirement board.
3. Departments and agencies participating in the North Dakota public employees retirement system will be notified of the election results ~~by mailing a copy of the election report~~. In addition, a report of the election results will be included in the North Dakota public employees retirement system newsletter.

History: Effective April 1, 1992; amended effective April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

CHAPTER 71-02-03

71-02-03-06. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination.

1. Aftertax payments may be accepted from the member as early as six months prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
 - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days by the fifteenth of the month following the month of the member's date of termination.
2. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.
3. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.

- b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
 - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer and the member's final average salary as of that date. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member within sixty days by the fifteenth of the month following the month of the member's date of termination.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
4. The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC ~~54-52-17.8~~; 54-52-27

71-02-03-07. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies relating to an employer purchase program pursuant to North Dakota Century Code section 54-52-26.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to

the executive director of the public employees retirement system a letter indicating when the program is to be canceled

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.4, 54-52-29

CHAPTER 71-02-04

71-02-04-03.1. Payment date - Retirement benefits for late retirees.

Except for retirement options provided in sections 71-02-04-02 and 71-02-04-03, for members who are terminated and older than the age at which they reach their normal retirement date, but who have delayed or inadvertently failed to apply for retirement benefits, the regular accrued annuity benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to their normal retirement date unless the deferred normal retirement option is elected or otherwise approved by the North Dakota public employees retirement system board. There will be no retroactive payment for the retiree health insurance credit program.

History: Effective April 1, 2002; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-04. Optional benefits. A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular single life retirement benefit.

- 1. One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse shall be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits shall terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
- 2. Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse shall be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits shall terminate in the month in which the death of the beneficiary occurs. In

the event the designated beneficiary predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

3. **Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent based on an age no earlier than sixty-two and no later than full retirement age as specified by the social security administration as chosen in writing by the member.

A member is not eligible for the level social security option if it results in a benefit payment of less than one hundred dollars per month.

A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits.

4. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.
5. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment, excluding the level social security income option, for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.
6. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive

to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.

History: Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.
3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month with the total repayment period not to exceed thirty-six months. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance, from the time the erroneous benefit was paid through the time it has been refunded in full, plus applicable interest. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month with the total repayment period not to exceed thirty-six months. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from

the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.

5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective June 1, 1996; amended effective April 1, 2002; July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 39-03.1-25, 54-52-17

71-02-04-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within sixty days of the discovery of the error, ~~with interest at the rate of six percent from the time underpayment occurred.~~
3. If the underpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the employer or recipient, the underpayment of benefits is to include interest at the rate of six percent from the time the underpayment occurred.
4. If the underpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the employer or recipient, the underpayment of benefits will not include interest.
5. If an individual dies prior to receiving the underpayment of benefits, the public employees retirement system must pay the designated beneficiary on record or, in the absence of a designation of beneficiary, to the estate.

History: Effective June 1, 1996; amended effective May 1, 2004; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 39-03.1-25, 54-52-17

CHAPTER 71-02-05

71-02-05-07. Optional benefits. For the main system and national guard or law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

- 1. One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
- 2. Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

3. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-07.1. Judges' retirement plan optional benefits. For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

1. **One hundred percent joint survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life normal retirement amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-06

71-02-06-04. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned. Adjustments for the following must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
2. Bonuses or profit-sharing amounts paid by a participating employer other than pursuant to North Dakota Century Code section 54-06-31 will be retroactively prorated equally as equal to the actual compensation paid over the term of the intended bonus or profit-sharing period. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for future months.
3. Upon receiving notice, contributions received in a month other than the month earned will be assigned to the appropriate month.

History: Effective June 1, 1993; amended effective June 1, 1996; July 1, 1998; July 1, 2000; April 1, 2002; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

CHAPTER 71-03-01

71-03-01-02. Bid specifications. Bid solicitations will be for:

1. Life insurance.
2. Hospital and medical coverages - fully insured contract.
3. Individual and aggregate stop-loss insurance.
4. Administrative services only.
5. Third-party administrators.
6. Dental insurance.
7. Vision insurance.
8. Long-term care insurance.
9. ~~Other bids will be solicited at the discretion of the board for the wellness program, cost containment programs, auditing services and such other services as may be determined by the board, from time to time, as necessary for the provision of these types of programs and services under the group insurance program.~~ Retired medicare-eligible employee group prescription drug coverage.

History: Effective October 1, 1986; amended effective May 1, 2004; April 1, 2008.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04

CHAPTER 71-03-05

71-03-05-02. Retiree billing. Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check. Retirees not paying a premium from their benefit check will receive a monthly billing. ~~The billing will be mailed on or about the twenty-fifth of the month preceding the month of coverage. Premium is due no later than the fifteenth of the month for which coverage is intended.~~

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2008.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-05-03. Late premium for retirees. Repealed effective April 1, 2008. ~~If the premium is not received by the due date, coverage will be canceled and a notice will be sent by certified mail. The notice advises the retiree that payment in full must be received within ninety days from the due date to reinstate coverage retroactively to the day of the month following the last month for which payment was received.~~

History: ~~Effective October 1, 1986; amended effective November 1, 1990; May 1, 2004.~~

General Authority: ~~NDCC 54-52.1-08~~

Law Implemented: ~~NDCC 54-52.1-03~~

71-03-05-08. Erroneous payment of premiums - Underpayments.

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.

4. If an underpayment is not discovered within the first month it occurs, the following will apply:
 - a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month with the total repayment period not to exceed thirty-six months. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.
 - b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.
5. ~~If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.~~ If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.
6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.
7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage will be canceled retroactive to the first day of the month following the month for which full premium payment was received. The public employees retirement system will notify the individual in writing that payment of claims will be suspended until payment is received in full. Coverage will be canceled if repayment is not made provide written notice advising the individual that payment in full must be received within thirty days of the written notification to reinstate coverage retroactively to the date that coverage was canceled.

History: Effective April 1, 2002; amended effective April 1, 2008.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-10. Determining amount of premium overpayments and underpayments.

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.
2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred.
3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred.
4. The amount of the vision premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred.

History: Effective April 1, 2002; amended effective April 1, 2008.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-07

71-03-07-06. Requirements for enrolling temporary employees and paid members of political subdivision boards, commissions, or associations. Each employer shall inform temporary employees and the paid members of its board, commission, or association of their right to the group insurance plan and the process necessary to enroll. Each employer shall provide each eligible member such forms as necessary to enroll in the group insurance plan. Each employer shall collect any member contribution due and submit it along with any employer contribution to the retirement board each month. The minimum employer contribution will be determined by the retirement board. ~~The political subdivision may not make a contribution for coverage for temporary employees.~~ Each employer shall notify the retirement board when an eligible member is no longer eligible for the group insurance plan. The retirement board shall inform such member of options available for continuation of coverage.

History: Effective June 1, 1996; amended effective May 1, 2004; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1

CHAPTER 71-05-02

71-05-02-04. Optional benefits. An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. These options are not available if the calculation of the optional benefit to which the member is entitled would result in an amount that is less than one hundred dollars.

- 1. One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member or, in the event of divorce, the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death if written notification of death, provided a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree. Should the member remarry and wish to change such designation, a new actuarial retirement benefit will be calculated.
- 2. Twenty-year or ten-year certain option.** A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

CHAPTER 71-05-04

71-05-04-08. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

1. Aftertax payments may be accepted from the member as early as six months prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
 - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of that date.
 - d. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days by the fifteenth of the month following the month of the member's date of termination.
 - e. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.
2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:

- a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
 - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member ~~within sixty days~~ by the fifteenth of the month following the month of the member's date of termination.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
3. The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

71-05-04-09. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 39-03.1-28.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to

the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.2

CHAPTER 71-05-05

71-05-05-03.1. Payment date - Retirement benefits for late retirees.

Except for retirement options provided in sections 71-05-05-02 and 71-05-05-03, for members who are terminated and older than the age at which they reach their normal retirement date, but who have delayed or inadvertently failed to apply for retirement benefits, the regular accrued annuity benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to their normal retirement date unless the deferred normal retirement option is elected or otherwise approved by the North Dakota public employees retirement system board. There will be no retroactive payment for the retiree health insurance credit program.

History: Effective April 1, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-04. Optional benefits. A member may elect, as provided in section 71-05-05-02, to receive one of the following optional benefits in lieu of the regular early or normal retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member may receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. In the event the member's spouse predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit shall be returned to the normal retirement amount. Payment of the normal retirement amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree. Should the member remarry and wish to change such designation, a new actuarial retirement benefit will be calculated.

Payments of benefits to a member's surviving spouse must be made on the first day of each month, commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate, death certificate, birth certificate verifying age, and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs.

2. **Twenty-year or ten-year term certain.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

3. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the normal annuity option. The member is permitted to choose one of the optional forms of payment for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.
4. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.

History: Effective October 1, 1991; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within sixty days of the discovery of the error, ~~with interest at the rate of six percent from the time underpayment occurred.~~
3. If the underpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the employer or recipient, the underpayment of benefits is to include interest at the rate of six percent from the time the underpayment occurred.
4. If the underpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the employer or recipient, the underpayment of benefits will not include interest.
5. If an individual dies prior to receiving the underpayment of benefits, the public employees retirement system must pay the designated

beneficiary on record, or in the absence of a designation of beneficiary to the estate.

History: Effective April 1, 2002; amended effective May 1, 2004; April 1, 2008.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25

CHAPTER 71-06-01

71-06-01-03. For individuals retirees receiving more than one benefit entitled to retiree health insurance credit.

1. ~~If an individual a retiree is receiving more than one benefit from the public employees retirement system, or other participating system; one as a surviving spouse, and the other based upon their the retiree's own service credit, the higher of the two retiree health insurance credits will be applied toward the individual's uniform group health insurance premium. Under no circumstances will these two benefits be combined. If the surviving spouse benefit is the larger of the two benefits, and is limited in duration, the individual will be eligible to utilize his or her own retiree health insurance credit upon cessation of surviving spouse benefits the retiree may make application with the public employees retirement system to combine retiree health insurance credits.~~
2. If an individual a retiree is receiving a public employees retirement system retirement benefit as a surviving spouse and is also an active contributor to either the public employees retirement system, the highway patrol retirement system, the judges retirement system, or the job service retirement program, the individual will not be eligible for retiree health insurance credit until one of the following events occurs:
 - a. The individual active contributor terminates employment, at which time they the active contributor may receive the retiree health insurance credit as any other surviving spouse.
 - b. The individual active contributor retires and begins receiving a benefit through an eligible retirement system, at which time they the active contributor may receive the greater of their own retiree health insurance credit or the credit available as a surviving spouse make application with the public employees retirement system to combine retiree health insurance credits.
3. If the individual ~~is~~ retiree was employed by a political subdivision which does not participate in the public employees retirement system health plan, and is drawing a retirement benefit or a surviving spouse benefit, the individual may receive the retiree health insurance credit as any other annuitant based upon a retiree premium.
4. If a husband and wife are both participants of a retirement system that provides the retiree health insurance credit, and are both receiving a benefit, the retiree health insurance credit will be applied as follows:
 - a. If each individual retiree takes a single health insurance plan under the uniform group health insurance program, each will have their respective retiree health insurance credit applied to their respective premiums.

- ~~b. If only one individual retiree takes a family health plan under the uniform group health insurance program, only that individual will be able to utilize his or her retiree health insurance credit applied to the premium they may make application with the public employees retirement system to combine retiree health insurance credits.~~
 - ~~c. In no event will the retiree health insurance credits for both spouses be combined and applied to only one premium.~~
5. Persons with service credit in more than one of the participating systems may combine that credit for retiree health insurance purposes, using the credit earned from the system the member contributed to most recently as primary.
6. Retirees are responsible for making application with the public employees retirement system to combine and discontinue combining retiree health insurance credits.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 1998; April 1, 2008.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

71-06-01-07. Optional benefits. A married member may elect to receive one of the following optional retiree health credit benefits in lieu of the retiree health insurance credit option provided in section 71-06-01-01:

1. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount must commence on the first day of the month following the spouse's death if a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount

shall commence on the first day of the month following the spouse's death providing written notification of the death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

History: Effective July 1, 1998; amended effective April 1, 2008.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

CHAPTER 71-08-07

71-08-07-01. Additional employer contributions. An employer may elect to provide additional employer contributions to an employee's account in an amount not exceeding the equivalent of a purchase of up to five years of service credit for that employee and the purchase of an employee's unused sick leave that meets the requirements of section 71-08-07-02. Before offering such a program to its employees, an employer must create a program and document it in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all additional employer contributions will not exceed the equivalent of a purchase of service credit as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member and the amount of service credit to be purchased or sick leave to be converted and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 54-52-26.

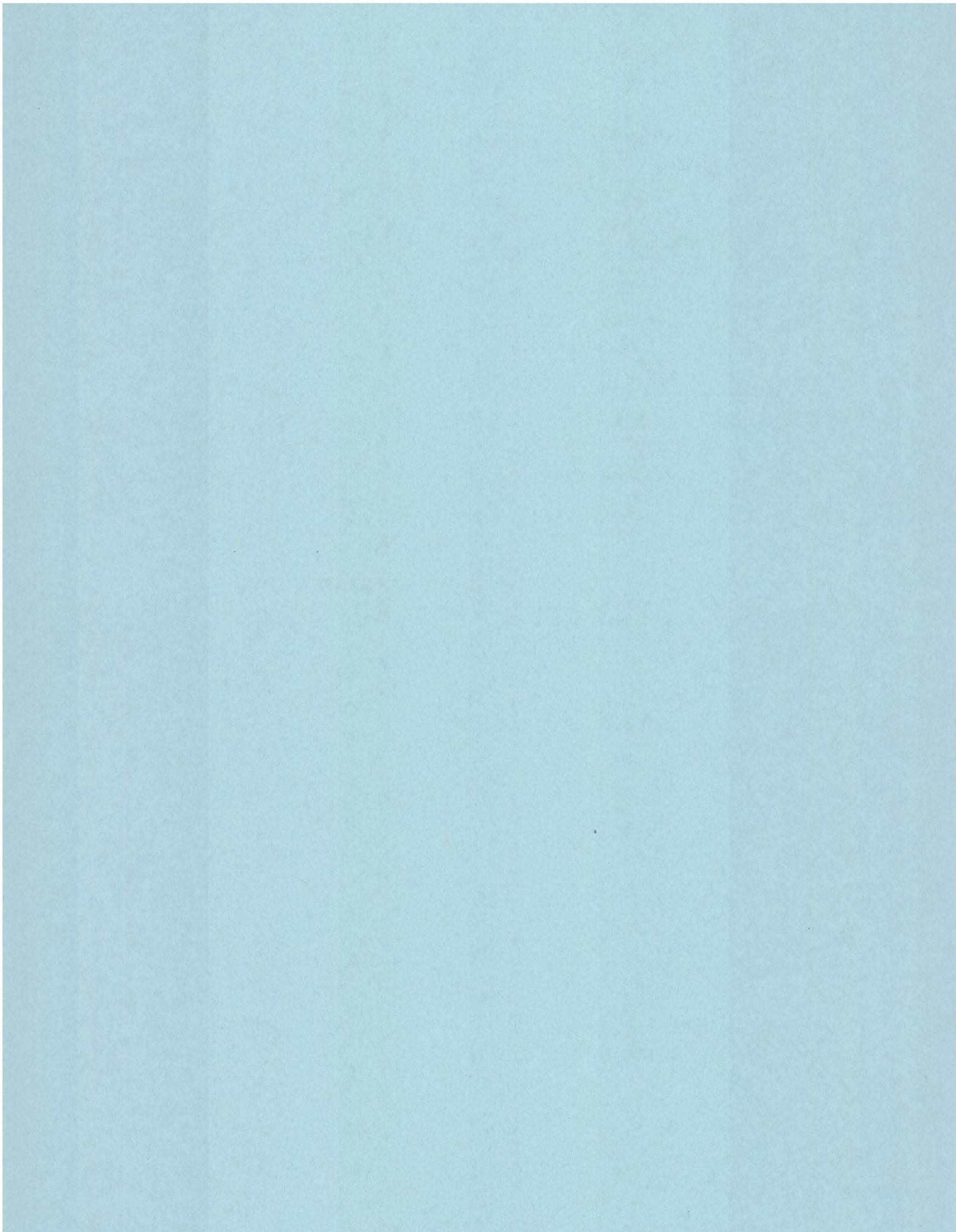
When an employer files the above letter with the public employees retirement system, the employer may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.2

TITLE 72
SECRETARY OF STATE



APRIL 2008

CHAPTER 72-06-01

72-06-01-02. Certification by secretary of state of electronic voting systems. Prior to ~~use and~~ procurement and subsequent use in this state, a company supplying electronic voting systems shall give written notice to the secretary of state and provide a demonstration certifying that its system complies with applicable laws and is certified by ~~an independent~~ a voting system test authority laboratory accredited by the EAC ~~as fulfilling the requirements of the EAC voluntary voting system guidelines~~. If the secretary of state approves the voting system, the secretary of state shall issue a certificate of approval.

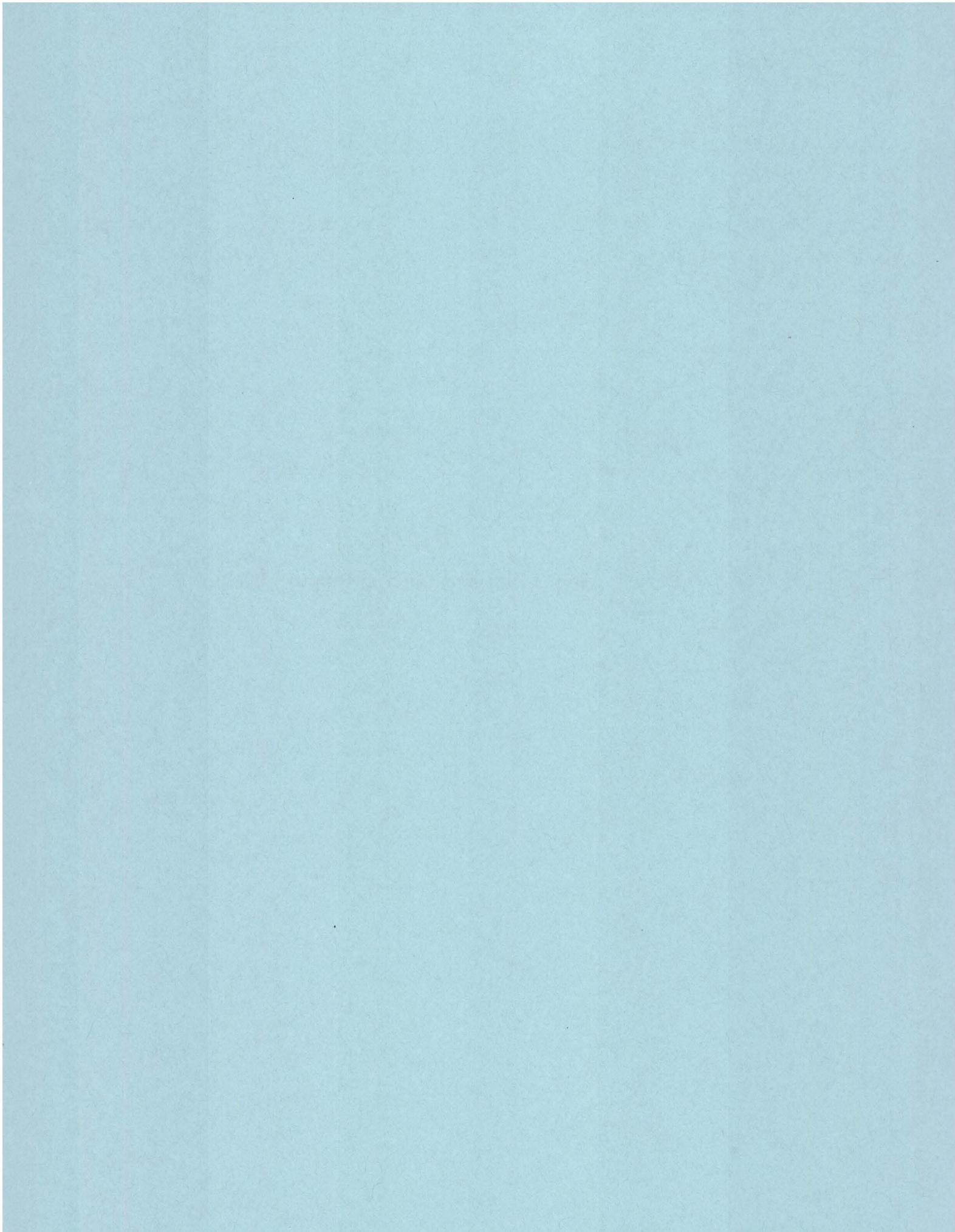
Any substantive changes or modifications in electronic voting systems may be certified by the secretary of state with or without the demonstration described in this section for initial approval provided that the modified system has been certified ~~as fulfilling the requirements of the EAC voluntary voting system guidelines~~ by a voting system test laboratory accredited by the EAC.

History: Effective March 1, 2004; amended effective July 1, 2006; April 1, 2008.

General Authority: NDCC 16.1-06-26

Law Implemented: NDCC 16.1-06-10.1, 16.1-06-11, 16.1-06-14, 16.1-06-26

TITLE 75
DEPARTMENT OF HUMAN SERVICES



APRIL 2008

CHAPTER 75-02-02.1

75-02-02.1-01. Definitions. For the purposes of this chapter:

1. "Agency" means the North Dakota department of human services.
2. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
3. "Blind" has the same meaning as the term has when used by the social security administration in determining blindness for title II or XVI of the Act.
4. "Child" means a person, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
5. "Contiguous" means real property which is not separated by other real property owned by others. Roads and other public rights of way which run through the property, even if owned by others, do not affect the property's contiguity.
6. "County agency" means the county social service board.
7. "Department" means the North Dakota department of human services.
8. "Deprived child" means a child who is deprived of parental support or care because one or both parents are deceased, incapacitated, disabled, aged, or maintains and resides in a separate verified residence for reasons other than employment, education, training, medical care, or uniformed service.
9. "Disabled" has the same meaning as the term has when used by the social security administration in determining disability for title II or XVI of the Act.

10. "Disabled adult child" means a disabled or blind person over the age of twenty-one who became blind or disabled before age twenty-two.
11. "Full calendar month" means the period which begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
12. "Good-faith effort to sell" means an honest effort to sell in a manner which is reasonably calculated to induce a willing buyer to believe that the property offered for sale is actually for sale at a fair price. A good-faith effort to sell includes, at a minimum, making the offer at a price based on an appraisal, a market analysis by a realtor, or another method which produces an accurate reflection of fair market value or, with respect to a determination of qualified disabled and working individual benefits under section 75-02-02.1-23, sixty-six and two-thirds percent of fair market value, in the following manner:
 - a. To any coowner, joint owner, possessor, or occupier of the property, and, if no buyer is thereby secured;
 - b. To the regular market for such property, if any regular market exists, or, if no regular market exists;
 - c. By public advertisement for sale in a newspaper of general circulation, the circulation area of which includes the location of any property resource offered for sale, which advertisement was published successively for two weeks if the newspaper is a weekly publication and for one week if the newspaper is a daily publication, and which includes a plain and accurate description of the property, the selling price, and the name, address, and telephone number of a person who will answer inquiries and receive offers.
13. "Healthy steps" means an insurance program, for children up to age nineteen, administered under North Dakota Century Code chapter 50-29 and title XXI of the Act.
14. "Home" includes, when used in the phrase "the home occupied by the medicaid unit", the land on which the home is located, provided that the acreage [hectarage] does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located within the established boundaries of a city.
15. "Home and community-based services" means services, provided under a waiver secured from the United States department of health and human services, which are:
 - a. Not otherwise available under medicaid; and

- b. Furnished only to individuals who, but for the provision of such services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded.
16. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or the Anne Carlsen facility, or who receives swing-bed care in a hospital.
17. "Living independently" means, in reference to an individual under the age of twenty-one, a status which arises in any of the following circumstances:
- a. The individual has served a tour of active duty with the armed services of the United States and lives separately and apart from the parent.
 - b. The individual has married, even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred.
 - c. The individual has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left a parental home, continues to live separately and apart from both parents, and has received no support or assistance from either parent while living separately and apart. For purposes of this subsection:
 - (1) Periods when the individual is attending an educational or training facility, receiving care in a specialized facility, or is an institutionalized individual are deemed to be periods when the individual is living with a parent unless the individual first established that the individual was living independently; and
 - (2) Health insurance coverage and court-ordered child support payments are not "assistance or support".
 - d. The individual is a former foster care recipient who has established a living arrangement separate and apart from either parent and received no support or assistance from either parent.
 - e. The individual lives separately and apart from both parents due to incest and receives no support or assistance from either parent.
18. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and title XIX of the Act [42 U.S.C. 1396 et seq.].

19. "Medicare cost sharing" means the following costs:
 - a. (1) Medicare part A premiums; and
(2) Medicare part B premiums;
 - b. Medicare coinsurance;
 - c. Medicare deductibles; and
 - d. Twenty percent of the allowed cost for medicare covered services where medicare covers only eighty percent of the allowed costs.
20. "Occupied" means, when used in the phrase "the home occupied by the medicaid unit", the home the medicaid unit is living in or, if temporarily absent from, possessed with an intention to return and the capability of returning within a reasonable length of time. Property is not occupied if the right to occupy has been given up through a rental or lease agreement, whether or not that rental or lease agreement is written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse, disabled adult child, or child under age twenty-one at home, unless a physician has certified that the individual is likely to return home within six months.
21. "Poverty level" means the income official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2).
22. "Property ~~which~~ that is essential to earning a livelihood" means property that a member of a medicaid unit owns, and which the medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the medicaid unit's needs. A member of a medicaid unit is actively engaged in using the property if a member of the unit contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property.
23. "Property ~~which~~ that is not saleable without working an undue hardship" means property which the owner has made a good-faith effort to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value, or sixty-six and two-thirds percent of the property's fair market value with respect to determination of qualified disabled and working individual benefits under section 75-02-02.1-23, and which is continuously for sale. Property may not be included within this definition at any time earlier than the first day of the first month in which a good-faith effort to sell is begun or if a bona fide offer is received by the third month after the month in which the good-faith effort to sell is begun.

24. "Regulation", as used in 42 CFR 431.210, 431.244, and 435.912, includes any written statement of federal or state law or policy, including, but not limited to, federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.
25. "Remedial services" means those services, provided in specialized facilities, which produce the maximum reduction of physical or mental disability and restoration of the facilities' residents to the residents' best possible level of functioning.
26. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.
27. "Specialized facility" means a residential facility, including a basic care facility, a licensed family foster care home for children or adults, a licensed group foster care home for children or adults, a transitional living facility, a facility established to provide quarters to clients of a sheltered workshop, and any other facility determined by the department to be a provider of remedial services, but does not mean an acute care facility or a nursing facility.
28. "State agency" means the North Dakota department of human services.
29. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
30. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Act [42 U.S.C. 601 et seq.].
31. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
32. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
33. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].
34. "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; August 1, 2005; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

75-02-02.1-04. Screening of recipients of certain services. All applicants or recipients who seek nursing care services in nursing facilities, swing-bed facilities, institutions for mental disease, or intermediate care facilities for the mentally retarded, or who seek home and community-based services, must demonstrate a medical necessity for the service sought on or prior to admission to a facility, upon application for medicaid while in a facility, or upon request for home and community-based services. That demonstration must be based on a screening provided by the department.

History: Effective December 1, 1991; amended effective July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

75-02-02.1-05. Coverage groups. Within the limits of legislative appropriation, the department may provide medicaid benefits to coverage groups described in the approved medicaid state plan in effect at the time those benefits are sought. These coverage groups do not define eligibility for medicaid benefits. Any person who is within a coverage group must also demonstrate that all other eligibility criteria are met.

1. The categorically needy coverage group includes:
 - a. Children for whom adoption assistance maintenance payments are made under title IV-E;
 - b. Children for whom foster care maintenance payments are made under title IV-E;
 - c. Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state;
 - d. Children in a foster care placement in North Dakota and receiving a title IV-E foster care payment from another state;
 - e. Caretakers, pregnant women, and children who meet the family coverage eligibility criteria;
 - f. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible because of the caretaker relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard;
 - g. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which they became ineligible as a result, wholly or partly, of the collection or increased collection of child or spousal support continue eligible for medicaid for four calendar months;

- h. Eligible pregnant women who applied for and were eligible for medicaid as categorically needy during pregnancy continue to be eligible for sixty days beginning on the last day of the pregnancy, and for the remaining days of the month in which the sixtieth day falls;
 - i. Children born to categorically needy eligible pregnant women who applied for and were found eligible for medicaid on or before the day of the child's birth, for sixty days beginning on the day of the child's birth and for the remaining days of the month in which the sixtieth day falls;
 - j. Aged, blind, or disabled individuals who are receiving supplemental security income payments or who appear on the state data exchange as zero payment as a result of supplemental security income's recovery of an overpayment or who are suspended because the individuals do not have a protective payee, provided that the more restrictive medicaid criteria is met; and
 - k. Individuals who meet the more restrictive requirements of the medicaid program and qualify for supplemental security income benefits under section 1619(a) or 1619(b) of the Act [42 U.S.C. 1382h(a) or 1382h(b)].
2. The optional categorically needy coverage group includes:
- a. Individuals under age twenty-one whose income is within the family coverage group levels, but who are not otherwise eligible under the family coverage group;
 - b. Individuals under age twenty-one who are residing in adoptive homes and who have been determined under the state-subsidized adoption program to be eligible as provided in state law and in accordance with the requirements of the department; and
 - c. Uninsured women under age sixty-five, who are not otherwise eligible for medicaid, who have been screened for breast and cervical cancer under the centers for disease control and prevention breast and cervical cancer early detection program, and who need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix.
 - d. Gainfully employed individuals with disabilities age eighteen to sixty-five who meet medically needy nonfinancial criteria, have countable assets within the medically needy asset levels, have income below two hundred twenty-five percent of the poverty level, and are not eligible for medicaid under any other provision except as a qualified medicare beneficiary or a special low-income medicare beneficiary. Coverage under this group ends on the last

day of the month before the month in which the individual attains the age of sixty-five.

- e. Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred percent of the poverty level, and who are not eligible for Medicaid under any other provision. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.

3. The medically needy coverage group includes:

- a. Eligible caretaker relatives and individuals under age twenty-one in families with deprived children who do not meet income or age family coverage group requirements, but meet medically needy income and asset standards;
- b. Individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income, but who do not qualify as categorically needy, including children in common in stepparent families who are ineligible under the family coverage group and foster care children who do not qualify as categorically needy;
- c. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;
- d. Eligible pregnant women who applied for medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible for sixty days beginning on the last day of pregnancy and for the remaining days of the month in which the sixtieth day falls;
- e. Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days, beginning on the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls;
- f. Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and
- g. Individuals under age twenty-one who have been certified as needing the service, or age sixty-five and over in the state hospital who qualify on the basis of financial eligibility.

4. The poverty level coverage group includes:

- a. Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;
- b. Eligible pregnant women who applied for and were poverty level eligible for medicaid during their pregnancy continue to be eligible for sixty days beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls;
- c. Children under the age of six who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;
- d. Children, age six to nineteen, who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level;
- e. Qualified medicare beneficiaries who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income at or below one hundred percent of the poverty level;
- f. Qualified disabled and working individuals who are individuals entitled to enroll in medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], who have income no greater than two hundred percent of the federal poverty level and assets no greater than twice the supplemental security income resource standard, and who are not eligible for medicaid under any other provision;
- g. Special low-income medicare beneficiaries who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income above one hundred percent of the poverty level, but not in excess of one hundred twenty percent of the poverty level; and
- h. Qualifying individuals who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, have income above one hundred twenty percent of the poverty level, but not in

excess of one hundred thirty-five percent of the poverty level, and are not eligible for medicaid under any other provision.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003; June 1, 2004; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-31

75-02-02.1-11. Need. Need is a factor of eligibility. Need in this sense is not to be confused with the necessity for a particular medical service.

1. Need is established for individuals who are determined to be categorically needy, optionally categorically needy, or poverty level eligible.
2. For a medically needy applicant or recipient, need is established when there is no recipient liability or when the applicant or recipient has incurred current medical expenses that for which the applicant or recipient is responsible after any third-party payments, which equal or exceed current recipient liability. If there is no need, there is no eligibility, and the application must be denied or the case must be closed.

History: Effective December 1, 1991; amended effective July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

75-02-02.1-14. Blindness and disability.

1. In any instance in which a determination is to be made as to whether any individual is disabled, each medical report form and social history shall be reviewed by a review team consisting of technically competent individuals, not less than a physician and an individual qualified by professional training and pertinent experience, acting cooperatively, who shall determine if the applicant meets the appropriate definitions of disability.
2. In any instance in which a determination is to be made whether an individual is blind, the individual shall be examined by a physician skilled in the diseases of the eye, or by an optometrist, whichever the individual may select, who shall prepare and submit an eye examination report. The state review team shall review and compare that report with the state's definition of blindness and determine:
 - a. Whether the individual meets the definition of blindness; and

- b. Whether and when reexaminations are necessary for periodic redeterminations of eligibility.
3. The state review team shall must decline to determine blindness or disability for a period of time that such a determination is made for supplemental security income or title II disability benefits by the social security administration, unless the medicaid applicant is applying for workers with disabilities coverage and is not eligible for title II disability due to substantial gainful activity.
4. The agency may not make an independent determination of disability if the social security administration has made a disability determination or will make a disability determination within ninety days after the date of application for medicaid.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 CFR Part 435

75-02-02.1-19.1. Family coverage group.

1. Caretakers, pregnant women, and children who meet the medically needy technical requirements and the requirements of this section are eligible under the family coverage group.
2. Families eligible under the family coverage group must include a child, who may be an unborn child, who is deprived of a biological or adoptive parent's support or care.
 - a. The child described in this subsection must be:
 - (1) Living with a caretaker relative; and
 - (2) Under age eighteen, or age eighteen and a full-time or part-time student in high school or an equivalent level of vocational or technical training if the student can reasonably be expected to complete the high school, general equivalency diploma, or vocational curriculum prior to or during the month the student turns age nineteen. A child who does not meet this age requirement is not included in any eligibility determinations for the family coverage group.
 - b. The parents of a caretaker who is at least age eighteen, or if under age eighteen is married or is not residing with the parents, may not be included in the same family unit as the caretaker.
 - c. If the only deprived child, including a disabled child in receipt of supplemental security income benefits, is age eighteen and is a

student anticipated to graduate prior to or during the month of the child's nineteenth birthday, the parent remains eligible under the family coverage group if all other criteria are met.

- d. An individual in receipt of social security or supplemental security income disability or retirement benefits may choose to be eligible as a disabled or aged individual under the medically needy coverage group, or may choose to be considered a caretaker, or child, under the family coverage group. These individuals are included in the unit as follows:
 - (1) An individual in receipt of social security disability or retirement benefits is included in the family unit for determining income eligibility regardless of whether the disabled individual chooses medicaid eligibility under the medically needy coverage group or the family coverage group.
 - (2) A supplemental security income recipient who chooses to be eligible as aged, blind, or disabled is not eligible for coverage under the family coverage group. The supplemental security income recipient is considered part of the family unit.
 - (a) A caretaker receiving supplemental security income benefits is included in the family unit for budget purposes due to the caretaker's financial responsibility for spouse and children; and
 - (b) A child receiving supplemental security income benefits is not included in the family unit for budget purposes.
 - (3) A supplemental security income recipient who chooses to be eligible as a caretaker or child may be eligible under the family coverage group, and the individual's supplemental security income is considered other unearned income.
3. A family may establish deprivation, for purposes of the family coverage group, if the family's countable income is within the family coverage income levels and the caretaker who is the primary wage earner is:
 - a. Employed less than one hundred hours per month; or
 - b. Employed more than one hundred hours in the current month, but was employed less than one hundred hours in the previous month and is expected to be employed less than one hundred hours in the following month.
4. The primary wage earner is the caretaker with greater current income unless the family or the agency establishes that the other caretaker

had the greater total earnings in the twenty-four-month period ending immediately before the month the family establishes eligibility for the family coverage group. A primary wage earner, once established, remains the primary wage earner as long as the family remains eligible.

5. Except as specifically provided in this section, sections 75-02-02.1-34, ~~75-02-02.1-36~~, 75-02-02.1-37, 75-02-02.1-38, 75-02-02.1-38.2, 75-02-02.1-39, 75-02-02.1-40, and 75-02-02.1-41.2 apply to the family coverage group.
6. When a caretaker does not live with the caretaker's parents, the parents' income is not considered.
7. a. The following deductions are not allowed:
 - (1) The work training allowance of thirty dollars provided under section 75-02-02.1-39; and
 - (2) Any earned income deduction available to applicants or recipients who are not aged, blind, or disabled.
- b. The following disregards and deductions are allowed from earned income:
 - (1) An employment expense allowance equal to one hundred twenty dollars of earned income is deducted from the gross earned income of each employed member of the medicaid unit.
 - (2) For each employed member of the unit, a disregard equal to thirty-three and one-third percent of the balance of earned income, after deducting the employment expense allowance, is disregarded.
- c. The following deductions are allowed from earned or unearned income:
 - (1) The cost of an essential service considered necessary for the well-being of a family is allowed as a deduction as needed. The service must be of such nature that the family, because of infirmity, illness, or other extenuating circumstance, may not perform independently. An essential service is intended to refer to such needs as housekeeping duties or child care during a parent's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family unit to a distant medical or rehabilitation facility.
 - (2) When the family includes a stepparent who is not eligible, or when a caretaker who is under age eighteen lives at home

with both parents and the parents are not eligible under the family coverage group, a deduction is allowed for amounts actually being paid by the stepparent or parents to any other persons not living in the home who are, or could be, claimed by the stepparent or parents as dependents for federal income tax purposes.

History: Effective January 1, 2003; amended effective September 1, 2003; June 1, 2004; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: 42 USC 1396u-1

75-02-02.1-24. Spousal impoverishment prevention.

1. For purposes of this section:
 - a. "Community spouse" means the spouse of an institutionalized spouse or the spouse of a home and community-based services spouse.
 - b. "Family member" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized spouse, home and community-based services spouse, or community spouse who are residing with the community spouse. For purposes of applying this definition, a family member is dependent only if that family member is, and may properly be, claimed as a dependent on the federal income tax return filed by the institutionalized spouse or home and community-based services spouse, or the community spouse, or filed jointly by both.
 - c. "Home and community-based services spouse" means an individual who:
 - (1) Requires care of the type provided in a nursing facility, but chooses to receive home and community-based services in the community; and
 - (2) Is married to a spouse who resides in the community at least one day of each month.
 - d. "Institutionalized spouse" means an individual who:
 - (1) Requires care in a medical institution, a nursing facility, a swing bed, or the state hospital and, at the beginning of the individual's institutionalization, was likely to be in the facility for at least thirty consecutive days even though the individual does not actually remain in the facility for thirty consecutive days; and

- (2) Is married to a spouse who resides in the community at least one day of each month.
 - e. "Monthly maintenance needs allowance" means for a community spouse, the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3) of the Act [42 U.S.C. 1396r-5(d)(3)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
2.
 - a. At the request of an institutionalized spouse, a home and community-based services spouse, or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse, or the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse, and upon receipt of relevant documentation of assets, the total value described in subdivision b shall be assessed and documented.
 - b. There shall be computed, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse, or as of the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse:
 - (1) The total value of the countable assets to the extent either the institutionalized spouse or the community spouse, or the home and community-based services spouse and the community spouse, has an ownership interest; and
 - (2) A spousal share, which is equal to one-half of all countable assets, but not less than the minimum amount permitted under section 1924(f)(2)(A)(i) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(i)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)], and not more than the maximum amount permitted under section 1924(f)(2)(A)(ii)(II) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(ii)(II)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
 - c. In determining the assets of the institutionalized spouse at the time of application, all countable assets held by the institutionalized spouse, the community spouse, or both, must be considered available to the institutionalized spouse to the extent they exceed the community spouse countable asset allowance.
 - d. In determining the assets of the home and community-based services spouse at the time of application, all countable assets held by the home and community-based services spouse, the community spouse, or both, must be considered available to the

home and community-based services spouse to the extent they exceed the community spouse asset allowance.

- e. During the continuous period in which the spouse is in an institution or receiving home and community-based services, and after the month in which an institutionalized spouse or a home and community-based services spouse is determined to be eligible for benefits under this chapter, no countable assets of the community spouse may be deemed available to the institutionalized spouse or home and community-based services spouse. Assets owned by the community spouse are not considered available to the institutionalized spouse or home and community-based services spouse during this continuous period of eligibility. A transfer of assets or income by the community spouse for less than fair market value is governed by section 75-02-02.1-33.1 and shall be considered in determining continuing eligibility of the institutionalized spouse or home and community-based services spouse.
- f. The institutionalized spouse or home and community-based services spouse is not ineligible by reason of assets determined under subdivision c or d to be available for the cost of care if:
 - (1) The institutionalized spouse or the home and community-based services spouse has assigned to the state any rights to support from the community spouse; or
 - (2) It is determined that a denial of eligibility would work an undue hardship because the presumption described in subsection 3 of section 75-02-02.1-25 has been rebutted.
- g. An institutionalized spouse or home and community-based services spouse is allowed the medically needy asset limit of three thousand dollars.
- h. An institutionalized spouse or a home and community-based services spouse is asset eligible if the total value of all countable assets owned by both spouses is less than the total of the community spouse countable asset allowance and the institutionalized spouse asset limit or home and community-based services asset limit, as applicable. The assets may be owned by either spouse provided that the requirements of subdivision i are complied with.
- i. Within the limits provided by this subdivision, transfers from an institutionalized spouse or a home and community-based services spouse to a community spouse do not disqualify the institutionalized spouse or home and community-based services

spouse from receipt of medicaid benefits. Such transfers, when made by an individual who has otherwise qualified for medicaid benefits, must be completed before the next regularly scheduled redetermination of eligibility. During this period, such assets are not counted as available to the institutionalized spouse even though the assets are not yet transferred.

- (1) An institutionalized spouse or a home and community-based services spouse may transfer an amount equal to the community spouse countable asset allowance, but only to the extent the assets of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse.
 - (2) When an eligible institutionalized spouse or home and community-based services spouse exceeds the asset limits due to an increase in the value of assets or the receipt of assets not previously owned, the institutionalized spouse or home and community-based services spouse may transfer additional assets to the community spouse equal to no more than the current community spouse countable asset allowance less the total value of assets owned by the community spouse, transferred to, or for the sole benefit of, the community spouse under paragraph 1, or previously transferred under this paragraph.
 - (3) If a transfer made under paragraph 1 or 2 causes the total value of all assets owned by the community spouse immediately prior to the transfer under paragraph 1, plus the value of all assets transferred under paragraph 1, plus the value of all assets transferred under paragraph 2, to equal or exceed the current community spouse asset allowance, no further transfer may be made under paragraph 2.
 - (4) If a court has entered an order against an institutionalized spouse for the support of a community spouse, assets required by such order to be transferred, by the institutionalized spouse to the community spouse, may not be counted as available to the institutionalized spouse even though the assets are not yet transferred.
3. A community spouse may retain or receive assets, which do not exceed the community spouse countable asset allowance, for purposes of determining the medicaid eligibility of the institutionalized spouse. The community spouse countable asset allowance means the spousal share determined under paragraph 2 of subdivision b of subsection 2, as adjusted pursuant to section 1924(g) of the Act [Pub. L. 105-33; 111 Stat. 549; 42 U.S.C. 1396r-5(g)] plus:

- a. Any additional amount transferred under a court order in the manner and for the purpose described in paragraph 4 of subdivision i of subsection 2; or
 - b. Any additional amount established through a fair hearing conducted under subsection 6.
4. Countable assets include all assets that are not specifically excluded. The provisions of section 75-02-02.1-28.1 governing asset exclusions apply to this section.
5. Income calculations must consider income in the manner provided for in section 75-02-02.1-34, income considerations, section 75-02-02.1-37, unearned income, section 75-02-02.1-38, earned income, section 75-02-02.1-38.1, posteligibility treatment of income, section 75-02-02.1-38.2, disregarded income, section 75-02-02.1-39, income deductions, and section 75-02-02.1-40, income levels, except:
 - a. No income of the community spouse may be deemed available to an institutionalized spouse during any month in which an institutionalized spouse is in the institution, or to a home and community-based services spouse during any month in which that spouse receives home and community-based services; and
 - b. No institutionalized spouse may be income eligible for medicaid in any month in which that spouse's income, after all income disregards and deductions other than the deduction of amounts provided to a spouse or family member, exceed an amount equal to that individual's current monthly medical expenses, not covered by a third party, plus the medically needy income level for one.
6. The provisions of this section describing the treatment of income and assets for the community spouse do not describe that treatment for the purposes of determining medicaid eligibility for the community spouse or for children of the community spouse.
7.
 - a. Notice must be provided of the amount of the community spouse income allowance, of the amount of any family allowances, of the method of computing the amount of the community spouse countable asset allowance, and of the right to a fair hearing respecting ownership or availability of income and assets, and the determination of the community spouse monthly income or countable asset allowance. The notice must be provided, upon a determination of medicaid eligibility of an institutionalized spouse, to both spouses, and upon a subsequent request by either spouse or a representative acting on behalf of either spouse, to the spouse making the request.

- b. A community spouse, or an institutionalized spouse or a home and community-based services spouse, is entitled to a fair hearing under chapter 75-01-03 if application for medicaid has been made on behalf of the institutionalized spouse or home and community-based services spouse and either spouse is dissatisfied with a determination of:
- (1) The community spouse monthly income allowance;
 - (2) The amount of monthly income otherwise available to the community spouse as determined in calculating the community spouse monthly income allowance;
 - (3) The computation of the spousal share of countable assets;
 - (4) The attribution of countable assets; or
 - (5) The determination of the community spouse countable asset allowance.
- c. Any hearing respecting the determination of the community spouse countable asset allowance must be held within thirty days of the request for the hearing.
- d. If either spouse establishes that the community spouse needs income, above the level provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, the monthly maintenance needs allowance for that spouse must be increased to an amount adequate to provide necessary additional income.
- e. (1) If either spouse establishes that the assets included within the community spouse countable asset allowance generate an amount of income inadequate to raise the community spouse's income to the monthly maintenance needs allowance, to the extent that total assets permit, the community spouse countable asset allowance for that spouse must be increased to an amount adequate to provide such a monthly maintenance needs allowance. For purposes of calculations made under this subdivision, all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, must be treated as having been made available before an additional amount of assets may be allocated to the community spouse under this subdivision.
- (2) To establish a need for an increased asset allowance under this subdivision, the applicant, recipient, or the community

spouse must provide verification of all income and assets of the community spouse.

- (3) The amount of assets adequate to provide a monthly maintenance needs allowance for the community spouse must be based on the cost of a single premium lifetime annuity selected by the department that provides monthly payments equal to the difference between the monthly maintenance needs allowance and other income of both spouses not generated by either spouse's countable assets.
 - (4) The monthly maintenance needs allowance amount upon which calculations under this subdivision are made must be the amount in effect upon filing of the appeal.
 - (5) The estimate of the cost of an annuity described in paragraph 3 must be substituted for the amount of assets attributed to the community spouse if the amount of assets previously determined is less than the estimate. If the amount of assets attributed to the community spouse prior to the hearing is greater than the estimate of the cost of an annuity described in paragraph 3, the attribution of assets to the community spouse made prior to the hearing must be affirmed.
 - (6) No applicant, recipient, or community spouse is required to purchase an annuity as a condition of the applicant or recipient's eligibility for medicaid benefits.
8. Any transfer of an asset or income is a disqualifying transfer under section 75-02-02.1-33.1 or 75-02-02.1-33.2, whether made by a community spouse, a home and community-based services spouse, or an institutionalized spouse, unless specifically authorized by this section. The income that may be received by or deemed provided to an ineligible community spouse, and the asset amounts that an ineligible community spouse may retain, are intended to allow that community spouse to avoid impoverishment. They are not intended to allow the community spouse to make transfers of assets or income, for less than adequate consideration, which would disqualify the institutionalized spouse or home and community-based services spouse, if made by the institutionalized spouse or home and community-based services spouse.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396r-5

75-02-02.1-24.2. Eligibility for workers with disabilities.

1. An individual shall be enrolled as a member of the workers with disabilities coverage if that individual:
 - a. Is gainfully employed;
 - b. Is at least sixteen, but less than sixty-five, years of age;
 - c. Is disabled as determined by the social security administration or the state review team;
 - d. Meets the requirements of this section; and
 - e. Is not in receipt of any other medicaid benefits under this chapter other than coverage as a qualified medicare beneficiary or a special low-income medicare beneficiary.
2. An individual may be regarded as gainfully employed only if, taking all factors into consideration, the individual shows that the activity asserted as employment:
 - a. Produces a product or service that someone would ordinarily be employed to produce and for which payment is received;
 - b. Reflects a relationship of employer and employee or producer and customer;
 - c. Requires the individual's physical effort for completion of job tasks, or, if the individual has the skills and knowledge to direct the activity of others, reflects the outcome of that direction; and
 - d. The employment setting is not primarily an evaluative or experiential activity.
3. Asset considerations provided under section 75-02-02.1-25, asset limits provided under section 75-02-02.1-26, exempt assets provided under section 75-02-02.1-27, and excluded assets provided under section 75-02-02.1-28.1 are applicable to the workers with disabilities coverage except that each individual enrolled as a member of the workers with disabilities coverage group is allowed an additional ten thousand dollars in assets.
4. No individual who has not paid a one-time enrollment fee of one hundred dollars may be enrolled.
5. Any individual who fails to pay the premium established under this section for three months shall be disenrolled and may not be reenrolled thereafter without first reestablishing eligibility under this section and

paying all outstanding enrollment fees and premiums. Any month in which no premium is due shall not be counted as a month in which the individual failed to pay a premium.

6. Payments received by the department from an individual claiming eligibility under this section shall be credited first to unpaid enrollment fees and then to the oldest unpaid premium. The department shall credit payments on the day received, provided that credit for any payment made by an instrument that is not honored shall be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.
7. A monthly premium is due on the tenth day of each month for which coverage is sought and shall be equal to five percent of the individual's gross countable income.
8. No individual may be found eligible under this section if the individual and the individual's family have total net income equaling or exceeding two hundred twenty-five percent of the poverty level.
9. ~~A written plan for achieving self-support shall be approved, and shall remain approved, for so long as the plan:~~
 - ~~a. Describes a purpose consistent with self-support;~~
 - ~~b. Provides for the disposition of an account containing no more than ten thousand dollars that is funded exclusively with sums earned while receiving medicaid benefits under this section or interest earned on deposits to that account; and~~
 - ~~c. Is followed by the individual.~~
10. This section becomes effective on the effective date of approved amendments to the medicaid state plan sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under this section, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

History: Effective June 1, 2004; amended effective August 1, 2005; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02.7, 50-24.1-18.1

75-02-02.1-24.3. Eligibility for children with disabilities.

1. A child must be enrolled as a member of the children with disabilities coverage if that child:

- a. Is under age nineteen, including the month the child turns age nineteen;
 - b. Is disabled;
 - c. Meets the requirements of this section; and
 - d. Is not in receipt of any other medicaid benefits under this chapter.
2. As a condition of eligibility, a child must be enrolled in a health insurance policy if:
 - a. The child's family has an employer-based health insurance plan available to them; and
 - b. The employer pays at least fifty percent of the premium.
3. A monthly premium is due on the tenth day of each month for which coverage is sought and is equal to five percent of the family's gross countable income. This premium may be offset by any other health insurance premium the family pays for a health insurance plan that provides coverage for the individual claiming eligibility under this section.
4. If the premium established for an individual's coverage under this section is not paid for three months, the individual will be disenrolled and may not be reenrolled without first reestablishing eligibility under this section and paying all outstanding premiums. Any month in which no payment is due may not be counted as a month in which the individual's premium failed to be paid.
5. Payments received by the department from or on behalf of an individual claiming eligibility under this section will be credited first to the oldest unpaid premium. The department will credit payments on the day received, provided that credit for any payment made by an instrument that is not honored will be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.
6. No individual may be found eligible under this section if the individual and the individual's family have total net income in excess of two hundred percent of the poverty level.
7. This section becomes effective March 1, 2008, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.
8. For purposes of this section, "family" means any member of the medicaid unit who is a spouse, parent, financially responsible caretaker

relative, sibling, or child of the individual requesting benefits under this section.

History: Effective April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-31

75-02-02.1-27. Exempt assets. The Except as otherwise specifically provided, the following assets are exempt from consideration in determining medicaid eligibility:

1. The home occupied by the medicaid unit, including trailer homes being used as living quarters;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One motor vehicle if the primary ~~purpose~~ use of the vehicle is to serve the needs of members of the medicaid unit;
4. Indian trust or restricted lands and the proceeds from the sale thereof, so long as those proceeds are impressed with the original trust; and
5. Indian per capita funds and judgments funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exemption.
6.
 - a. In determining the eligibility of an individual with respect to skilled nursing services, swing-bed, or home and community-based benefits, the individual will be ineligible for those medicaid benefits if the individual's equity interest in the individual's home exceeds five hundred thousand dollars.
 - b. The dollar amount specified in this subsection will be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.
 - c. This subsection does not apply to an individual whose spouse, or child who is under age twenty-one or is blind or disabled, lawfully resides in the individual's home.

- d. This subsection may not be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.
 - e. This subsection applies only to individuals who made application for medicaid with respect to skilled nursing facility services, swing-bed, or home and community-based benefits on or after January 1, 2006.
7. a. Notwithstanding any other provision to the contrary, the assets of an individual must be disregarded when determining medicaid eligibility in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that:
- (1) Covers an insured who was a resident of North Dakota when coverage first became effective under the policy;
 - (2) Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, issued not earlier than the effective date of the state plan amendment described in subdivision b;
 - (3) The agency determines meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the state insurance commissioner certifies that the policy meets such requirements; and
 - (4) Is sold to an individual who:
 - (a) Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
 - (b) Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
 - (c) Has attained age seventy-six as of the date of purchase.
- b. This subsection applies only to individuals who have purchased a long-term care insurance policy described in this subsection with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets:
- (1) To the extent that payments are made under such a long-term care insurance policy; or

- (2) Because an individual has received or is entitled to receive benefits under such a long-term care insurance policy.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-28. Excluded assets. Except as provided in section 75-02-02.1-28.1, the following types of assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. Property which that is essential to earning a livelihood.
 - a. Property may be excluded as essential to earning a livelihood only during months in which a member of the medicaid unit is actively engaged in using the property to earn a livelihood, or during months when the medicaid unit is not actively engaged in using the property to earn a livelihood, if the medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:
 - (1) Within twelve months of the last use; or
 - (2) If the nonuse is due to the disabling condition of a member of the medicaid unit, within twenty-four months of the last use.
 - b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:
 - (1) The individual's employment is contingent upon ownership of the property; or
 - (2) There is no ready market for the property.
 - c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.
 - d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.
 - e. Property from which a medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.

- f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.
2. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale and until a bona fide offer for at least seventy-five percent of the property's fair market value is made. Good-faith efforts to sell must be repeated at least annually in order for the property to continue to be excluded.
 - a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.
 - b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.
3. a. Any prepayments or deposits which total five thousand dollars or less, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.
 - (1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.
 - (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion.
 - (3) The prepayments on a whole life insurance policy or annuity are the premiums that have been paid.
 - (4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient shall be considered part of the burial fund.

- (5) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.
- (6) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.
- (7) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.
- (8) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.

b. A burial plot for each family member.

4. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.
5. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, and comparable disaster assistance received from a state or local government, or from a disaster assistance organization. This asset must be identifiable and not commingled with other assets.
6. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months, and may be excluded for an additional twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.
7. For nine months, beginning after the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates

that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.

8. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
9. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.
10. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].
11. For nine months beginning after the month of receipt, any educational scholarship, grant, or award and any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.
12. For nine months beginning after the month of receipt, any income tax refund, any earned income tax credit refund, or any advance payments of earned income tax credit. This asset must be identifiable and not commingled with other assets.
13. Assets set aside, by a blind or disabled, but not an aged, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the social security administration.
14. The value of a life estate.
15. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.
16. The value of mineral acres.
17. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

75-02-02.1-28.1. Excluded assets for medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention.

1. An asset may be excluded for purposes of medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention only if this section provides for the exclusion. An asset may be excluded under this section only if the asset is identified.
2. The assets described in subsections 2 through 5 of section 75-02-02.1-27 and subsections 1, 2, and 4 through ~~47~~ 18 of section 75-02-02.1-28 are excluded.
3. A residence occupied by the individual, the individual's spouse, or the individual's dependent relative is excluded for medicare savings programs and qualified disabled and working individuals. A residence occupied by the community spouse is excluded for spousal impoverishment prevention cases. The residence may include a mobile home suitable for use, and being used, as a principal place of residence. The residence remains excluded during temporary absence of the individual from the residence so long as the individual intends to return. Renting or leasing part of the residence to a third party does not affect this definition. For purposes of this subsection:
 - a. "Dependent" means an individual who relies on another for medical, financial, and other forms of support, provided that an individual is financially dependent only when another individual may lawfully claim the financially dependent individual as a dependent for federal income tax purposes;
 - b. "Relative" means the parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew, or first cousin, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse; and
 - c. "Residence" includes all contiguous lands, including mineral interests, upon which it is located.
4. Burial funds of up to one thousand five hundred dollars each, plus earnings on excluded burial funds, held for the individual and for the individual's spouse, are excluded from the date of application. Burial funds may consist of revocable burial accounts, revocable burial trusts, other revocable burial arrangements including the value of installment sales contracts for burial spaces, cash, financial accounts such as savings or checking accounts, or other financial instruments with definite cash value, such as stocks, bonds, or certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with

non-burial-related assets, and must be identified as a burial fund by title of account or a signed statement. Life or burial insurance designated under subsection 10 must be considered at face value toward meeting the burial fund exclusion. Cash surrender value of an individual's life insurance not excluded under subsection 10 may be applied toward the burial fund exclusion.

5. A burial space or agreement which represents the purchase of a burial space, paid for in full, for the individual, the individual's spouse, or any other member of the individual's immediate family is excluded. The burial space exclusion is in addition to the burial fund exclusion set forth in subsection 4. Only one item intended to serve a particular burial purpose, per individual, may be excluded. For purposes of this subsection:
 - a. "Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and closing of the gravesite or for care and maintenance of the gravesite; and
 - b. "Other member of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those individuals, whether the relationship is established by birth, adoption, or marriage, except that a relationship established by marriage ends when the marriage ends.
6. At the option of the individual, and in lieu of, but not in addition to, the burial fund described in subsection 4 and the burial space described in subsection 5, the medicaid burial described in subsection 3 of section 75-02-02.1-28 may be excluded. This optional exclusion is not available to qualified disabled and working individuals or to community spouses.
7. Property essential to self-support is excluded.
 - a. Up to six thousand dollars of the equity value of nonbusiness, income-producing property, which produces annual net income at least equal to six percent of the excluded amount, may be excluded. Two or more properties may be excluded if each property produces at least a six percent annual net return, but no more than a total of six thousand dollars of the combined equity value of the properties may be excluded. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars. Equity in such property is a countable asset if it produces an annual net income of less than six percent of equity.

- b. Up to six thousand dollars of the equity value of nonbusiness property used to produce goods and services essential to daily activities is excluded. Such nonbusiness property is used to produce goods and services essential to daily activities when, for instance, it is used to grow produce or livestock solely for consumption in the individual's household. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars.
 - c. To be excluded, property essential for self-support must be in current use, or, if not in current use, must have been in such use, and there must be a reasonable expectation that the use will resume, and, with respect to property described in subdivision a, the annual return test must be met:
 - (1) Within twelve months of the last use;
 - (2) If the nonuse is due to the disabling condition of the applicant or recipient, or, with respect to spousal impoverishment prevent cases, the community spouse, within twenty-four months of the last use; or
 - (3) With respect to property described in subdivision a, if the property produces less than a six percent return for reasons beyond the control of the applicant or recipient, and there is a reasonable expectation that the property shall again produce a six percent return within twenty-four months of the tax year in which the return dropped below six percent.
 - d. Liquid assets are not property essential to self-support.
- 8. Lump sum payments of title II or supplemental security income benefits are excluded for nine consecutive months following the month of receipt.
 - 9. Real property, the sale of which would cause undue hardship to a co-owner, is excluded for so long as the co-owner uses the property as a principal residence, would have to move if the property were sold, and has no other readily available housing. This exclusion is not available in spousal impoverishment cases.
 - 10. Life or burial insurance that generates a cash surrender value is excluded if the face value of all such life and burial insurance policies on the life of that individual total one thousand five hundred dollars or less. This exclusion is not available for applicants or recipients who select the medicaid burial described in subsection 3 of section 75-02-02.1-28.
 - 11. The value of assistance is excluded if paid with respect to a dwelling unit occupied by the applicant or recipient, or by the applicant's or recipient's

spouse, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)].

12. Relocation assistance is excluded if provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.], which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636]. Relocation assistance provided by a state or local government that is comparable to the described federal relocation assistance is excluded, but only for nine months following the month of receipt.
13. Agent orange payments are excluded.
14. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.] are excluded.
15. German reparations payments to survivors of the holocaust, and reparations payments made under sections 500 through 506 of the Austrian General Social Insurance Act are excluded.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

75-02-02.1-31. Trusts.

1. A trust is an arrangement whereby a person known as the "grantor" or "trustor" gives assets to another person known as the "trustee" with instructions to use the assets for the benefit of a third person known as the "beneficiary". The assets placed in trust are called the "principal" or "corpus". The positions of grantor, trustee, and beneficiary occur in all trusts, but it is not uncommon for a single trust to involve more than one grantor, trustee, or beneficiary. It is also not uncommon for a grantor to establish a trust where the grantor is also a beneficiary or where the trustee is also a beneficiary. "Trusts" includes escrow accounts, investment accounts, conservatorship accounts, and any other legal instruments, devices, or arrangements, whether or not written, managed by an individual or entity with fiduciary obligations. A trust may have an effect on eligibility whether the applicant is a grantor, trustee, or beneficiary.
2. Review of a trust as a part of an eligibility determination includes efforts to ascertain the intent of the grantor. The grantor has no authority

or power to determine eligibility or to require a particular outcome in an eligibility determination, and a grantor's efforts to do so may be disregarded.

3. Trusts may be categorized in many ways, but the revocability of a trust is a fundamental characteristic. A revocable trust is a trust that the grantor, or someone acting at the request, direction, or influence of the grantor, has the power to revoke, remove from, or otherwise end the trust. An irrevocable trust is a trust that may not be revoked in any way by the grantor or anyone acting at the request, direction, or influence of the grantor. The determination of trust revocability is not based solely on trust terms stating the trust is irrevocable. A trust is treated as revocable, regardless of its terms, if:
 - a. The trust reserves a power to amend to the grantor, or grants a power to amend to some other person, unless the power to amend is limited to authority to terminate the trust for impossibility of administration, and the trust also provides for distribution of the trust assets to the primary beneficiary, free of trust;
 - b. The grantor and the beneficiaries consent to the revocation;
 - c. The grantor is also the sole beneficiary of the trust;
 - d. The grantor of a trust and all trust beneficiaries are part of a medicaid unit;
 - e. The grantor is a parent, and beneficiaries of the trust include only the grantor, the grantor's spouse, or the grantor's minor children;
 - f. The trust has been amended subsequent to its establishment;
 - g. The trust provides for termination and disbursement to the grantor upon conditions relating to the grantor during the grantor's lifetime;
or
 - h. The trust provides for revocation or amendment only upon order of a court.
4. In the case of a revocable trust:
 - a. The corpus of the trust shall be considered assets available to the grantor;
 - b. Payments from the trust to or for the benefit of grantor, the grantor's spouse, or the grantor's dependent child shall be considered income of the grantor;

necessary, but words such as "care", "maintenance", "medical needs", or "support" are usually present. The term includes trusts which may also be called "discretionary support trusts", so long as support is a trust purpose and the trustee's discretion is not unfettered. This subsection applies without regard to:

- (1) Whether or not the support trust is irrevocable or is established for purposes other than to enable a beneficiary to qualify for medicaid or any other benefit program where availability of benefits requires the establishment of financial need; or
 - (2) Whether or not the discretion is actually exercised.
- b. Except as provided in subdivisions c and d, the amount from a support trust deemed available to the beneficiary, the beneficiary's spouse, and the beneficiary's children is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the beneficiary.
- c. A beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise any discretion with respect to that distribution, may show that the amounts deemed available under subdivision b are not actually available by:
- (1) Commencing proceedings against the trustee or trustees in a court of competent jurisdiction;
 - (2) Diligently and in good faith asserted in the proceeding that the trustee or trustees is required to provide support out of the trust; and
 - (3) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount determined under subdivision b.
- d. If the beneficiary makes the showing described in subdivision c, the amount deemed available from the trust is the amount determined by the court.
- e. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing under subdivision c, to make the department, the state of North Dakota, or a county agency a party to the proceeding, or to show to the court that medicaid benefits may be available if the court

limits the amounts deemed available under the trust, precludes the showing of good faith required under subdivision c.

8. a. For purposes of this subsection, "other trust" means any trust for which treatment is not otherwise described in this section or section 75-02-02.1-31.1.
 - b. The amount from an "other trust" deemed available to a beneficiary of that trust is the greater of the amount which must be distributed to that beneficiary under the terms of the trust, whether or not that amount is actually distributed, and the amount which is actually distributed.
9. An applicant or recipient who is a trustee has the legal ownership of trust property and the legal powers to distribute income or trust assets which are described in the trust. However, those powers may be exercised only on behalf of trust beneficiaries. If the trustee or other members of the medicaid unit are not also beneficiaries or grantors to whom trust income or assets are treated as available, trust assets are not available to the trustee.
10. Trusts may provide that trust benefits are intended only for a beneficiary's "special needs", and require the trustee to take into consideration the availability of public benefits and resources, including medicaid. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including medicaid benefits. Some trusts may contain terms which attempt to declare or make the determination of the availability of trusts assets for medicaid purposes. If a trust contains such terms, the amount available to the medicaid applicant or recipient is the amount provided in this section, assuming, for the purposes of making that determination, that the applicant or recipient is ineligible for medicaid.
11. A trust is established, with respect to any asset that is a part of the trust corpus, on the date that asset is made subject to the trust by an effective transfer to the trustee.
12. This section applies to any trust to which section 75-02-02.1-31.1 does not apply. Subsections 1, 2, and 3 apply to trusts described in section 75-02-02.1-31.1.

History: Effective December 1, 1991; amended effective December 1, 1991; October 1, 1993; July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396a(k)

75-02-02.1-31.1. Trusts established by applicants, recipients, or their spouses after August 10, 1993.

1. For purposes of determining an individual's eligibility under this chapter, subject to subsection 4, this section applies to a trust established by the individual after August 10, 1993. Subsections 1, 2, and 3 of section 75-02-02.1-31 apply to this section.
2. a. For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used, by someone with lawful authority over those assets, to form all or part of the corpus of the trust and if any of the following individuals established that trust other than by will:
 - (1) The individual;
 - (2) The individual's spouse;
 - (3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - (4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- b. In the case of a trust the corpus of which includes assets of an individual, as determined under subdivision a, and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.
- c. Subject to subsection 4, this section shall apply without regard to:
 - (1) The purposes for which a trust is established;
 - (2) Whether the trustees have or exercise any discretion under the trust;
 - (3) Any restrictions on when or whether distributions may be made from the trust; or
 - (4) Any restrictions on the use of distributions from the trust.
3. a. In the case of a revocable trust:
 - (1) The corpus of the trust shall be considered assets available to the individual;

- (2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and
- (3) Any other payments from the trust shall be considered income or assets disposed of by the individual for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2.

b. In the case of an irrevocable trust:

- (1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered available to the individual, and payments from that portion of the corpus or income:
 - (a) To or for the benefit of the individual, shall be considered income of the individual; and
 - (b) For any other purpose, shall be considered a transfer of income or assets by the individual subject to section 75-02-02.1-33.1; and
- (2) Any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust, or, if later, the date on which payment to the individual was foreclosed, to be income or assets disposed of by the individual for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2, and the value of the trust shall be determined for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2 by including the amount of any payments made from such portion of the trust after such date.

4. This section shall not apply to:

- a. A trust containing the assets of an individual under age sixty-five who is disabled and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court, to the extent the person establishing the trust has lawful authority over the individual's assets, and if, under the terms of the trust, the department will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medicaid benefits paid under North Dakota Century Code chapter 50-24.1 on behalf of the individual; or
- b. A trust containing the assets of a disabled individual that meets the following conditions:

- (1) The trust is established and managed by a qualified nonprofit association that acts as trustee;
 - (2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts;
 - (3) Accounts in the trust are established solely for the benefit of a disabled individual by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
 - (4) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the department from such remaining amounts in the account an amount equal to the total amount of medicaid benefits paid under North Dakota Century Code chapter 50-24.1 on behalf of the beneficiary.
5. The department may waive application of this section as creating an undue hardship if the individual establishes that some other person, not currently receiving medicaid, food stamps, temporary assistance for needy families benefits, or low-income home energy assistance program benefits, would become eligible for such benefits because of and upon application of this section, and that the cost of those benefits, provided to that other person, exceeds the cost of medicaid benefits available to the individual if application is waived.
6. For purposes of this section "income" and "assets" include all income and assets of the individual and of the individual's spouse, including any income or assets that the individual or the individual's spouse is entitled to, but does not receive because of action:
 - a. By the individual or the individual's spouse;
 - b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
7. A trust is established, with respect to any asset that is a part of the trust corpus, on the date that asset is made subject to the trust by an effective transfer to the trustee.
8. A nonprofit association is qualified to establish and manage a trust described in subdivision b of subsection 4 only if the nonprofit corporation:

- a. Is organized and operated exclusively for other than profit-making purposes and distributes no part of the corporation's income to its members;
- b. Is qualified to receive charitable donations for which a taxpayer may lawfully claim a deduction under the provisions of section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)];
- c. Has a governing board that includes no more than twenty percent membership related to any one disabled individual with an account maintained in the trust:
 - (1) As a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the disabled individual or the disabled individual's current or former spouse; or
 - (2) As agent or fiduciary of any kind except with respect to the trust established and managed by the nonprofit association.
- d. Has no employee or agent whose compensation is in any way related to or conditioned upon the amount or nature of funds retained by the trust from the account of any deceased beneficiary;
- e. Complies with the provisions of North Dakota Century Code section 10-33-12, whether or not incorporated or doing business in North Dakota; and
- f. Retains funds from a deceased beneficiary's account only if:
 - (1) The retained funds are to compensate the trust for services rendered;
 - (2) The account is that of a beneficiary who was a disabled individual who did not receive benefits under this chapter; or
 - (3) The account does not contain the assets of a disabled individual.

History: Effective October 1, 1993; amended effective July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(d)

75-02-02.1-32. Valuation of assets. It is not always possible to determine the value of assets with absolute certainty, but it is necessary to determine a

value in order to determine eligibility. The valuation must be based on reasonably reliable information. It is the responsibility of the applicant or recipient, or the persons acting on behalf of the applicant or recipient, to furnish reasonably reliable information. Because an applicant or recipient may not be knowledgeable of asset values, and particularly because that person may have a strong interest in the establishment of a particular value, whether or not that value is accurate, some verification of value must be obtained. If a valuation from a source offered by an applicant or recipient is greatly different from generally available or published sources, the applicant or recipient must provide a convincing explanation for the differences particularly if the applicant or recipient may be able to influence the person providing the valuation. If reasonably reliable information concerning the value of assets is not made available, eligibility may not be determined. Useful sources of verification include:

1. With respect to liquid assets: reliable account records.
2. With respect to personal property other than liquid assets:
 - a. Publicly traded stocks, bonds, and securities: stockbrokers.
 - b. Autos, trucks, mobile homes, boats, farm equipment, or any other property listed in published valuation guides accepted in the trade: the valuation guide.
 - c. With respect to harvested grains or produce: grain buyers, grain elevator operators, produce buyers; and, for crops grown on contract: the contract.
 - d. With respect to stock in corporations not publicly traded: appraisers, accountants.
 - e. With respect to other personal property: dealers and buyers of that property.
3. Real property.
 - a. With respect to mineral interests: appraisers, specializing in minerals, mineral buyers, geologists.
 - b. With respect to agricultural lands: appraisers, real estate agents dealing in the area, loan officers in local agricultural lending institutions, and other persons known to be knowledgeable of land sales in the area in which the lands are located, but not the "true and full" value from tax records.
 - c. With respect to real property other than mineral interests and agricultural lands: market value or "true and full" value from tax records, whichever represents a reasonable approximation of fair

market value; real estate agents dealing in the area; and loan officers in local lending institutions.

4. Divided or partial interests. Divided or partial interests include assets held by the applicant or recipients; jointly or in common with persons who are not in the medicaid unit; assets where the applicant or recipient or other persons within the medicaid unit own only a partial share of what is usually regarded as the entire asset; and interests where the applicant or recipient owns only a life estate or remainder interest in the asset.
 - a. Liquid assets. The value of a partial or shared interest in a liquid asset is equal to the total value of that asset.
 - b. Personal property other than liquid assets and real property other than life estates and remainder interests. The value of a partial or shared interest is a proportionate share of the total value of the asset equal to the proportionate share of the asset owned by the applicant or recipient.
 - c. Life estates and remainder interests.
 - (1) The life estate and remainder interest tables must be used to determine the value of a life estate or remainder interest. In order to use the table, it is necessary to first know the age of the life tenant or, if there are more than one life tenants, the age of the youngest life tenant; and the fair market value of the property which is subject to the life estate or remainder interest. The value of a life estate is found by selecting the appropriate age in the table and multiplying the corresponding life estate decimal fraction times the fair market value of the property. The value of a remainder interest is found by selecting the appropriate age of the life tenant in the table and multiplying the corresponding remainder interest decimal fraction times the fair market value of the property.

Life Estate and Remainder Interest Table

<u>Age</u>	<u>Life Estate</u>	<u>Remainder Interest</u>
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019

5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132

36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449

67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450

98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

- (2) The life estate and remainder interest tables are based on the anticipated lifetimes of individuals of a given age according to statistical tables of probability. If the life tenant suffers from a condition likely to cause death at an unusually early age, the value of the life estate decreases and the value of the remainder interest increases. An individual who requires long-term care, who suffers from a condition that is anticipated to require long-term care within twelve months, or who has been diagnosed with a disease or condition likely to reduce the individual's life expectancy is presumed to suffer from a condition likely to cause death at an unusually early age, and may not rely upon statistical tables of probability applicable to the general population to establish the value of a life estate or remainder interest. If an individual is presumed to suffer from a condition likely to cause death at an unusually early age, an applicant or recipient whose eligibility depends upon establishing the value of a life estate or remainder interest must provide a reliable medical statement that estimates the remaining duration of life in years. The estimated remaining duration of life may be used, in conjunction with a life expectancy table, to determine the comparable age for application of the life estate and remainder interest table.

5. Contractual rights to receive money payments:

- a. The Except as provided in subdivision d, the value of contractual rights to receive money payments which provide interest at rates at or above the posted yields of the federal national mortgage

~~association, as posted for standard conventional fixed rate mortgages, as published in the Wall Street Journal at its most recent publication of posted yields, is equal to the principal balance plus interest due to the time of valuation, provided that the contract is not in default in which payments are current is an amount equal to the total of all outstanding payments of principal required to be made by the contract.~~

- b. ~~Some contracts may have been entered into when interest rates were lower, or a low interest rate or no interest may have been charged in a transaction between relatives. These contracts may not be saleable or negotiable at face value. A proper valuation may be made by a process called "discounting", which will take into account the changes in the interest rates. The discounting process requires estimating the present value of the money payments described in the contract. The formula for present value is:~~

$$PV = S \frac{1 - (1+i)^{-n}}{i} \text{ or } S(1+i)^{-n} \text{ where}$$

~~PV = present value of future sum of money
 S = future sum of money
 i = earnings rate for each compounding period
 n = number of periods~~

~~The information to apply the formula is derived from the contract except for the factor "i". The earnings rate to be used for the factor "i" is the posted yields of the federal national mortgage association, as posted for standard conventional fixed rate mortgages, as published in the Wall Street Journal at its most recent publication of posted yields. The application of this formula will produce the highest reasonable determination of fair market value of the contractual rights to receive money payments. Except as provided in subdivision d, the value of contractual rights to receive money payments in which payments are not current is the current fair market value of the property subject to the contract.~~

- c. ~~The applicant or recipient must provide a copy of the documents that established the contractual right to receive money payments, sufficient payment information to determine if the contractual applications are current or in default, and if in default, the amount and date of each payment actually made. In the event the contract is in default, and there is no reasonable expectation that payments on the contract will be brought current within one year's time, the factor "S" is equal to the total of all outstanding principal and interest due on the contract and the factor "n" equals one.~~

d. ~~In some cases, the price and terms of a contract may, in combination, be extremely favorable to the payer. If the sale is made with a minimal downpayment, low interest rates, a long payment period, or a combination of any of those factors, the effect may be a transfer for less than adequate consideration. In such cases, the valuation must also indicate the fair market value of the property sold as of the date of sale and the value of the contractual rights immediately after the sale. Except as provided in subdivision d, if upon execution the total of all principal payments required under the terms of the contract is less than the fair market value of the property sold, the difference is a disqualifying transfer governed by section 75-02-02.1-33.1 or 75-02-02.1-33.2, and the value of the contract is determined under subdivision a or b.~~

d. A contractual right to receive money payments that consists of a promissory note, loan, or mortgage is a disqualifying transfer governed by section 75-02-02.1-33.2 of an amount equal to the outstanding balance due as of the date the lender or purchaser, or the lender's or purchaser's spouse, first applies for medicaid to secure nursing care services, as defined in section 75-02-02.1-33.2, if:

(1) Any payment on the contract is due after the end of the contract payee's life expectancy as established in accordance with actuarial publications of the office of the chief actuary of the social security administration;

(2) The contract provides for other than equal payments or for any balloon or deferred payment; or

(3) The contract provides for any payment otherwise due to be diminished after the contract payee's death.

e. The value of a contractual right to receive money payments that consists of a promissory note, loan, or mortgage not described in subdivision d shall be determined under subdivision a or b.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-33.1. Disqualifying transfers made before February 8, 2006.

1. a. Except as provided in subsections 2 and 10, an individual is ineligible for nursing care services, swing-bed services, or home and community-based services if the individual or the spouse of the individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.

- b. The look-back date specified in this subdivision is a date that is the number of months specified in paragraph 1 or 2 before the first date on which the individual is both receiving nursing care services and has applied for benefits under this chapter, without regard to the action taken on the application.
 - (1) Except as provided in paragraph 2, the number of months is thirty-six months, ~~or if approved by waiver, sixty months.~~
 - (2) The number of months is sixty months:
 - (a) In the case of payments from a revocable trust that are treated as income or assets disposed of by an individual pursuant to subdivision c of subsection 4 of section 75-02-02.1-31 or paragraph 3 of subdivision a of subsection 3 of section 75-02-02.1-31.1;
 - (b) In the case of payments from an irrevocable trust that are treated as income or assets disposed of by an individual pursuant to subparagraph b of paragraph 1 of subdivision b of subsection 3 of section 75-02-02.1-31.1; and
 - (c) In the case of payments to an irrevocable trust that are treated as income or assets disposed of by an individual pursuant to paragraph 2 of subdivision b of subsection 3 of section 75-02-02.1-31.1.
 - c. The period of ineligibility begins the first day of the month in which income or assets have been transferred for less than fair market value, or if that day is within any other period of ineligibility under this section, the first day thereafter that is not in such a period of ineligibility.
 - d. The number of months and days of ineligibility for an individual shall be equal to the total cumulative uncompensated value of all income and assets transferred by the individual, or individual's spouse, on or after the look-back date specified in subdivision b, divided by the average monthly cost, or average daily cost as appropriate, of nursing facility care in North Dakota at the time of the individual's first application.
2. Except as limited by subdivision i of subsection 2 of section 75-02-02.1-24, an individual shall not be ineligible for medicaid by reason of subsection 1 to the extent that:
- a. The assets transferred were a home, and title to the home was transferred to:

- (1) The individual's spouse;
 - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
 - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
 - (4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;
- b. The income or assets:
- (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
 - (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
 - (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or
 - (4) Were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled;
- c. The individual makes a satisfactory showing that:
- (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
 - (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or
 - (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or
- d. The asset transferred was an asset excluded or exempted for medicaid purposes other than:

- (1) The home or residence of the individual or the individual's spouse;
 - (2) Property which is not saleable without working an undue hardship;
 - (3) Excluded home replacement funds;
 - (4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;
 - (5) Life estate interests;
 - (6) Mineral interests; or
 - (7) An asset received from a decedent's estate during any period it is excluded under subdivision b of subsection 17 of section 75-02-02.1-28; or
 - (8) An annuity.
3. An individual shall not be ineligible for medicaid by reason of subsection 1 to the extent the individual makes a satisfactory showing that an undue hardship exists.
- a. An undue hardship exists only if the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual or the individual's spouse is less than the total of all unpaid nursing care bills for services:
 - (1) Provided after the last such transfer was made which are not subject to payment by any third party; and
 - (2) Incurred when the individual and the individual's spouse had no assets in excess of the appropriate asset levels.
 - b. If the individual shows that an undue hardship exists, the individual shall be subject to an alternative period of ineligibility that begins on the first day of the month in which the individual and the individual's spouse had no excess assets and continues for the number of months determined by dividing the total cumulative uncompensated value of all such transfers by the average monthly unpaid charges incurred by the individual for nursing care services provided after the beginning of the alternative period of ineligibility.
4. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:

- a. In any case in which the individual's assets (and the assets of the individual's spouse) remaining after the transfer produce income which, when added to other income available to the individual (and to the individual's spouse) totals an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual (and by the individual's spouse) in the month of transfer and in the thirty-five months (or fifty-nine months in the case of a transfer from a revocable or irrevocable trust that is treated as assets or income disposed of by the individual (or the individual's spouse) or in the case of payments to an irrevocable trust that are treated as assets or income disposed of by the individual (or the individual's spouse)) following the month of transfer;
 - b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;
 - c. In any case in which the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;
 - d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other countable assets, would exceed the asset limits at section 75-02-02.1-26; or
 - e. In any case in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney-in-fact, to the individual's relative, or to the guardian, conservator, or attorney-in-fact or to any parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, whether by birth, adoption, and whether by whole or half-blood, of the guardian, conservator, or attorney-in-fact or the spouse or former spouse of the guardian, conservator, or attorney-in-fact.
5. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 4. The fact, if it is a fact, that the individual would be eligible for the medicaid coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.

6. If a transfer results in a period of ineligibility under this section for an individual receiving nursing care services, and the transfer was made on or after the look-back date of the individual's spouse, and if the individual's spouse is otherwise eligible for medicaid and requires nursing care services, the remaining period of ineligibility shall be apportioned equally between the spouses. If one such spouse dies or stops receiving nursing care services, any months remaining in that spouse's apportioned period of ineligibility must be assigned or reassigned to the spouse who continues to receive nursing care services.
7. No income or asset transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may be treated as consideration for the transferred income or asset unless:
 - a. The transfer is made pursuant to a valid written contract entered into prior to rendering the services or assistance;
 - b. The contract was executed by the individual or the individual's fiduciary who is not a provider of services or assistance under the contract;
 - c. Compensation is consistent with rates paid in the open market for the services or assistance actually provided; and
 - d. The parties' course of dealing included paying compensation upon rendering services or assistance, or within thirty days thereafter.
8. A transfer is complete when the individual or the individual's spouse making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
9. For purposes of this section:
 - a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.

- b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].
- c. "Fair market value" means:
 - (1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
 - (2) In the case of real or personal property that is subject to reasonable dispute concerning its value:
 - (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
 - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
 - (3) In the case of income, one hundred percent of apparent fair market value.
- d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.
- e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395, et seq.; Pub. L. 92-603; 86 Stat. 1370].
- f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract

under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395, et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:

- (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
 - (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
 - (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
 - (4) Includes:
 - (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
 - (b) Medical expense benefits consisting of medicare part B coinsurance;
 - (c) Blood provision consisting of the first three pints of blood each year;
 - (d) Skilled nursing coinsurance;
 - (e) Medicare part A deductible coverage;
 - (f) Medicare part B deductible coverage;
 - (g) Medicare part B excess benefits at one hundred percent coverage; and
 - (h) Foreign travel emergency coverage.
- g. "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing bed, the state hospital, or a home and community based services setting.
- h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew,

great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.

- i. "Someone in a confidential relationship" includes an individual's attorney-in-fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.
 - j. "Uncompensated value" means the difference between fair market value and the value of any consideration received.
10. The provisions of this section do not apply in determining eligibility for medicare savings programs.
11. An individual disposes of assets or income when the individual, or anyone on behalf of the individual or at the request of the individual, acts or fails to act in a manner that effects a transfer, conveyance, assignment, renunciation, or disclaimer of any asset or income in which the individual had or was entitled to claim an interest of any kind.
12. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:
- a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application; or
 - b. The individual, having capacity to contract, disposed of the assets or income with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.
13. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

- a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
 - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.
14. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:
- a. For each month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
 - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.
15. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:
- a. The annuity is irrevocable and cannot be assigned to another person;
 - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
 - c. The annuity provides substantially equal monthly payments such that the total annual payment in any year varies by five percent or less from the total annual payment of the previous year and does not provide for a balloon or deferred payment of principal or interest;

- d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the department; and
- e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly maintenance needs allowance provided under subsection 1 of section 75-02-02.1-24.

16. This section applies to transfers of income or assets made before February 8, 2006.

History: Effective October 1, 1993; amended effective December 1, 1996; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

75-02-02.1-33.2. Disqualifying transfers made on or after February 8, 2006.

- 1. This section applies to transfers of income or assets made on or after February 8, 2006.
- 2. Except as provided in subsections 6 and 15, an individual is ineligible for skilled nursing care, swing-bed, or home and community-based benefits if the individual or the individual's spouse disposes of assets or income for less than fair market value on or after the look-back date. The look-back date is a date that is sixty months before the first date on which the individual is both receiving skilled nursing care, swing-bed, or home and community-based services and has applied for benefits under this chapter, without regard to the action taken on the application.
- 3. An applicant, recipient, or anyone acting on behalf of an applicant or recipient, has a duty to disclose any transfer of any asset or income made by or on behalf of the applicant or recipient, or the spouse of the applicant or recipient, for less than full fair market value:
 - a. When making an application;
 - b. When completing a redetermination; and
 - c. If made after eligibility has been established, by the end of the month in which the transfer was made.
- 4. The date that a period of ineligibility begins is the latest of:
 - a. The first day of the month in which the income or assets were transferred for less than fair market value;

- b. The first day on which the individual is receiving nursing care services and would otherwise have been receiving benefits for institutional care but for the penalty; or
 - c. The first day thereafter which is not in a period of ineligibility.
- 5. a. The number of months and days of ineligibility for an individual shall be equal to the total cumulative uncompensated value of all income and assets transferred by the individual, or individual's spouse, on or after the look-back date divided by the average monthly cost or average daily cost, as appropriate, of nursing facility care in North Dakota at the time of the individual's first application.
- b. A fractional period of ineligibility may not be rounded down or otherwise disregarded with respect to any disposal of assets or income for less than fair market value.
 - c. Notwithstanding any contrary provisions of this section, in the case of an individual or an individual's spouse who makes multiple fractional transfers of assets or income in more than one month for less than fair market value on or after the look-back date established under subsection 2, the period of ineligibility applicable to such individual must be determined by treating the total, cumulative uncompensated value of all assets or income transferred during all months on or after the look-back date as one transfer and one penalty period must be imposed beginning on the earliest date applicable to any of the transfers.
- 6. For purposes of this section, "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase.
- 7. Except as limited by subdivision i of subsection 2 of section 75-02-02.1-24, an individual shall not be ineligible for medicaid by reason of subsection 1 to the extent that:
 - a. The assets transferred were a home, and title to the home was transferred to:
 - (1) The individual's spouse;
 - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
 - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or

(4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;

b. The income or assets:

(1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;

(2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or

(4) Were transferred to a trust established solely for the benefit of an individual less than sixty-five years of age who is disabled;

c. The individual makes a satisfactory showing that:

(1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;

(2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or

(3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or

d. The asset transferred was an asset excluded or exempted for medicaid purposes other than:

(1) The home or residence of the individual or the individual's spouse;

(2) Property that is not saleable without working an undue hardship;

(3) Excluded home replacement funds;

(4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or

replacement of lost, damaged, or stolen exempt or excluded assets:

- (5) Life estate interests;
- (6) Mineral interests;
- (7) An asset received from a decedent's estate during any period it is considered to be unavailable under subsection 5 of section 75-02-02.1-25; or
- (8) An annuity.

8. a. An individual shall not be ineligible for medicaid by reason of subsection 2 to the extent the individual makes a satisfactory showing that an undue hardship exists for the individual. Upon imposition of a period of ineligibility because of a transfer of assets or income for less than fair market value, the department shall notify the applicant or recipient of the right to request an undue hardship exception. An individual may apply for an exception to the transfer of asset penalty if the individual claims that the ineligibility period will cause an undue hardship to the individual. A request for a determination of undue hardship must be made within ninety days after the circumstances upon which the claim of undue hardship is made were known or should have been known to the affected individual or the person acting on behalf of that individual if incompetent. The individual must provide to the department sufficient documentation to support the claim of undue hardship. The department shall determine whether a hardship exists upon receipt of all necessary documentation submitted in support of a request for a hardship exception. An undue hardship exists only if the individual shows that all of the following conditions are met:

- (1) Application of the period of ineligibility would deprive the individual of food, clothing, shelter, or other necessities of life or would deprive the individual of medical care such that the individual's health or life would be endangered;
- (2) The individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has exhausted all lawful means to recover the assets or income or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer;
- (3) A person who would otherwise provide care would have no cause of action, or has exhausted all causes of action, against the transferee of the assets or income of the individual or the individual's spouse under North Dakota Century Code

chapter 13-02.1, the Uniform Fraudulent Transfers Act, or any substantially similar law of another jurisdiction; and

(4) The individual's remaining available assets and the remaining assets of the individual's spouse are less than the asset limit in subsection 1 of section 75-02-02.1-26 counting the value of all assets except:

(a) A home, exempt under section 75-02-02.1-27, but not if the individual or the individual's spouse has equity in the home in excess of twenty-five percent of the amount established in the approved state plan for medical assistance which is allowed as the maximum home equity interest for nursing facility services or other long-term care services;

(b) Household and personal effects;

(c) One motor vehicle if the primary use is for transportation of the individual, or the individual's spouse or minor, blind, or disabled child who occupies the home; and

(d) Funds for burial of five thousand dollars or less for the individual and the individual's spouse.

b. Upon the showing required by this subsection, the department shall state the date upon which an undue hardship begins and, if applicable, when it ends.

c. The agency shall terminate the undue hardship exception, if not earlier, at the time an individual, the spouse of the individual, or anyone with authority to act on behalf of the individual, makes any uncompensated transfer of income or assets after the undue hardship exception is granted. The agency shall deny any further requests for an undue hardship exception due to either the disqualification based on the transfer upon which the initial undue hardship determination was based, or a disqualification based on any subsequent transfer.

9. If a request for an undue hardship waiver is denied, the applicant or recipient may request a fair hearing in accordance with the provisions of chapter 75-01-03.

10. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:

a. In any case in which the individual's assets and the assets of the individual's spouse remaining after the transfer produce income which, when added to other income available to the individual and

to the individual's spouse, total an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual and by the individual's spouse in the month of transfer and in the fifty-nine months following the month of transfer;

- b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;
 - c. In any case in which the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;
 - d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other countable assets, would exceed the asset limits in section 75-02-02.1-26; or
 - e. In any case in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney in fact, to a relative of the individual or the individual's spouse, or to the guardian, conservator, or attorney in fact or to any parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, whether by birth, adoption, and whether by whole or half-blood, of the guardian, conservator, or attorney in fact or the spouse or former spouse of the guardian, conservator, or attorney in fact.
11. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 10. The fact, if it is a fact, that the individual would be eligible for the medicaid coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.
12. If a transfer results in a period of ineligibility under this section for an individual receiving nursing care services, and if the individual's spouse is otherwise eligible for medicaid and requires nursing care services, the remaining period of ineligibility shall be apportioned equally between the spouses. If one such spouse dies or stops receiving nursing care services, any months remaining in that spouse's apportioned period of ineligibility must be assigned or reassigned to the spouse who continues to receive nursing care services.

13. No income or asset transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may be treated as consideration for the transferred income or asset unless:
- a. The transfer is made pursuant to a valid written contract entered into prior to rendering the services or assistance;
 - b. The contract was executed by the individual or the individual's fiduciary who is not a provider of services or assistance under the contract;
 - c. Compensation is consistent with rates paid in the open market for the services or assistance actually provided; and
 - d. The parties' course of dealing included paying compensation upon rendering services or assistance, or within thirty days thereafter.
14. A transfer is complete when the individual or the individual's spouse making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
15. For purposes of this section:
- a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.
 - b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].
 - c. "Fair market value" means:
 - (1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
 - (2) In the case of real or personal property that is subject to reasonable dispute concerning its value;

- (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
 - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
- (3) In the case of income, one hundred percent of apparent fair market value.
- d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage, including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.
- e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395 et seq; Pub. L. 92-603; 86 Stat. 1370].
- f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395 et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:
 - (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
 - (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination

thereof, or for members or former members, or combination thereof, of the labor organization;

(3) Is approved for issuance by the insurance regulatory body in the state of issuance; and

(4) Includes:

(a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;

(b) Medical expense benefits consisting of medicare part B coinsurance;

(c) Blood provision consisting of the first three pints of blood each year;

(d) Skilled nursing coinsurance;

(e) Medicare part A deductible coverage;

(f) Medicare part B deductible coverage;

(g) Medicare part B excess benefits at one hundred percent coverage; and

(h) Foreign travel emergency coverage.

g. "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing-bed, the state hospital, or a home and community-based services setting.

h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.

i. "Someone in a confidential relationship" includes an individual's attorney in fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.

j. "Uncompensated value" means the difference between fair market value and the value of any consideration received.

16. The provisions of this section do not apply in determining eligibility for medicare savings programs.
17. An individual disposes of assets or income when the individual, or anyone on behalf of the individual or at the request of the individual, acts or fails to act in a manner that effects a transfer, conveyance, assignment, renunciation, or disclaimer of any asset or income in which the individual had or was entitled to claim an interest of any kind.
18. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:
 - a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application;
or
 - b. The individual, having capacity to contract, disposed of the assets or income with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.
19. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:
 - a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
 - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.
20. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at

least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, and before January 1, 2007, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1.095 times that daily benefit, and:

- a. For each month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
- b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.

21. With respect to an annuity transaction which includes the purchase of, selection of an irrevocable payment option, addition of principal to, elective withdrawal from, request to change distribution from, or any other transaction that changes the course of payments from an annuity which occurs on or after February 8, 2006, an individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:

- a. The owner of the annuity provides documentation satisfactory to the department that names the department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the department is named in the second position after the community spouse or minor or disabled child, and that establishes that any attempt by such spouse or a representative of such child to dispose of any such remainder shall cause the department to become the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant;
- b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
- c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
- d. The annuity provides substantially equal monthly payments of principal and interest that vary by five percent or less from the total

annual payment of the previous year, and does not have a balloon or deferred payment of principal or interest;

- e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration; and
- f. All annuities owned by the purchaser produce total monthly gross income that:
 - (1) Does not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5; and
 - (2) When combined with the purchaser's other monthly income at the time the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse applies for benefits under this chapter, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5.

History: Effective April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

75-02-02.1-38.1. Post-eligibility treatment of income. This Except in determining eligibility for workers with disabilities or children with disabilities, this section prescribes specific financial requirements for determining the treatment of income and application of income to the cost of care for an individual screened as requiring nursing care services who resides in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or an intermediate care facility for the mentally retarded, or who receives swing-bed care in a hospital.

1. The following types of income may be disregarded in determining medicaid eligibility:
 - a. Occasional small gifts;
 - b. For so long as 38 U.S.C. 5503 remains effective, ninety dollars of veterans administration improved pensions paid to a veteran, or a surviving spouse of a veteran, who has neither spouse nor child, and who resides in a medicaid-approved nursing facility;
 - c. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the

- Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.];
- d. Agent orange payments;
 - e. German reparation payments made to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
 - f. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
 - g. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note]; and
 - h. Interest or dividend income from liquid assets.
2. The mandatory payroll deductions under the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and medicare are allowed from earned income.
 3. In establishing the application of income to the cost of care, the following deductions are allowed in the following order:
 - a. The nursing care income level;
 - b. Amounts provided to a spouse or family member for maintenance needs;
 - c. The cost of premiums for health insurance in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage;
 - d. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage;
 - e. Medical expenses for necessary medical or remedial care that are each:
 - (1) Documented in a manner which describes the service, the date of the service, the amount of cost incurred, and the name of the service provider;
 - (2) Incurred in the month for which eligibility is being determined;

- (3) Provided by a medical practitioner licensed to furnish the care;
 - (4) Not subject to payment by any third party, including medicaid and medicare;
 - (5) Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility because of a disqualifying transfer; and
 - (6) Claimed; and
- f. The cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.
4. For purposes of this section, "premiums for health insurance" include any payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:
- a. Limited to disability or income protection coverage;
 - b. Automobile medical payment coverage;
 - c. Supplemental to liability insurance;
 - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
 - e. Credit accident and health insurance.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-38.2. Disregarded income.

1. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility:

- a. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;
- b. Occasional small gifts;
- c. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;
- d. Income received as a housing allowance by a program sponsored by the United States department of housing and urban development or rent supplements or utility payments provided through a housing assistance program;
- e. Income of an individual living in the parental home if the individual is not included in the medicaid unit;
- f. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student, or any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution;
- g. In-kind income except in-kind income received in lieu of wages;
- h. Per capita judgment funds paid to members of the Blackfeet Tribe and the Gros Ventre Tribe under Pub. L. 92-254, to any tribe to pay a judgment of the Indian claims commission or the court of claims under Pub. L. 93-134, or to the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, or the Little Shell Tribe of Chippewa Indians of Montana under Pub. L. 97-403;
- i. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.], including foster grandparents, older American community service program, retired senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;
- j. Benefits received through the low income home energy assistance program;
- k. Training funds received from vocational rehabilitation;
- l. Training allowances of up to thirty dollars per week provided through a tribal native employment works program, or the job opportunity and basic skills program;

- m. Income tax refunds and earned income credits;
- n. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Investment Act [29 U.S.C. 2801 et seq.], and through the job opportunities and basic skills program;
- o. Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by section 6 of Pub. L. 94-114 [42 U.S.C. 301, note];
- p. Income earned by a child who is a full-time student or a part-time student who is not employed one hundred hours or more per month;
- q. Payments from the family subsidy program;
- r. The first fifty dollars per month of current child support, received on behalf of children in the medicaid unit, from each budget unit that is budgeted with a separate income level;
- s. Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4621 et seq.];
- t. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
- u. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.];
- v. Agent orange payments;
- w. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
- x. The medicare part B premium refunded by the social security administration;
- y. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
- z. Temporary assistance for needy families benefit and support service payments;

- aa. Lump sum supplemental security income benefits in the month in which the benefit is received;
- bb. German reparation payments made to survivors of the holocaust and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
- cc. Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.], or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance;
- dd. Refugee cash assistance or grant payments;
- ee. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;
- ff. Extra checks consisting only of the third regular payroll check or unemployment benefit payment received in a month by an individual who is paid biweekly, and the fifth regular payroll check received in a month by an individual who is paid weekly;
- gg. All income, allowances, and bonuses received as a result of participation in the job corps program;
- hh. Payments received for the repair or replacement of lost, damaged, or stolen assets;
 - ii. Homestead tax credit;
 - jj. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
- kk. Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects, under 38 U.S.C. 1805 or 38 U.S.C. 1815;
 - ll. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
- mm. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note];
- nn. The first two thousand dollars per year of lease payments deposited in individual Indian moneys accounts;

- oo. Interest or dividend income from liquid assets; and
 - pp. Additional pay received by military personnel as a result of deployment to a combat zone.
2. For purposes of this section:
- a. "Full-time student" means a person who attends school on a schedule equal to a full curriculum; and
 - b. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-39. Income deductions. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. No deduction not described in subsections 1 through 14 may be allowed in determining medicaid eligibility.

1. Except in determining eligibility for the medicare savings programs, the cost of premiums for health insurance may be deducted from income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage. In determining eligibility for the workers with disabilities coverage, the workers with disabilities enrollment fee and premiums are not deducted. In determining eligibility for the children with disabilities coverage, the children with disabilities premiums are not deducted. For purposes of this subsection, "premiums for health insurance" include payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:
 - a. Limited to disability or income protection coverage;
 - b. Automobile medical payment coverage;

- c. Supplemental to liability insurance;
 - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
 - e. Credit accident and health insurance.
2. Except in determining eligibility for the medicare savings programs, medical expenses for necessary medical or remedial care may be deducted only if each is:
 - a. Documented in a manner which describes the service, the date of the service, the amount of the cost incurred, and the name of the service provider;
 - b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined;
 - c. Provided by a medical practitioner licensed to furnish the care;
 - d. Not subject to payment by any third party, including medicaid and medicare;
 - e. Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1; and
 - f. Claimed.
3. Reasonable expenses such as food and veterinarian expenses necessary to maintain a service animal that is trained to detect seizures for a member of the medicaid unit.
4. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments may be deducted if actually paid by a member of the medicaid unit.
5. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse may be deducted from income in the month the premium is paid or prorated and deducted from income the months for which the premium affords coverage. No premium deduction may be made in determining eligibility for the medicare savings programs.
6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.

7. With respect to each individual in the medicaid unit who is employed or in training, but who is not aged, blind, or disabled, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.
8. Except in determining eligibility for the medicare savings programs, transportation expenses may be deducted if necessary to secure medical care provided for a member of the medicaid unit.
9. Except in determining eligibility for the medicare savings programs, the cost of remedial care for an individual residing in a specialized facility, limited to the difference between the recipient's cost of care at the facility and the regular medically needy income level, may be deducted.
10. A disregard of twenty dollars per month is deducted from any income, except income based on need, such as supplemental security income and need-based veterans' pensions. This deduction applies to all aged, blind, and disabled applicants or recipients, provided that:
 - a. When more than one aged, blind, or disabled person lives together, no more than a total of twenty dollars may be deducted;
 - b. When both earned and unearned income is available, this deduction must be made from unearned income; and
 - c. When only earned income is available, this deduction must be made before deduction of sixty-five dollars plus one-half of the remaining monthly gross income made under subdivision b of subsection 13.
11. Reasonable adult dependent car expenses for an incapacitated or disabled adult member of the medicaid unit may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.
12. The cost to purchase or rent a car safety seat for a child through age ten is allowed as a deduction if a seat is not otherwise reasonably available.
13. The deductions described in this subsection may be allowed only on earned income.
 - a. For all individuals except aged, blind, or disabled applicants or recipients, deduct:
 - (1) Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;
 - (2) Mandatory retirement plan deductions;

- (3) Union dues actually paid; and
 - (4) Expenses of a nondisabled blind person, reasonably attributable to earning income.
- b. For all aged, blind, or disabled applicants or recipients, deduct sixty-five dollars plus one-half of the remaining monthly gross earned income, provided that, when more than one aged, blind, or disabled person lives together, no more than sixty-five dollars, plus one-half of the remaining combined earned income, may be deducted.
14. A deduction may be made for the cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-40. Income levels.

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for medicaid. The income levels applicable to individuals and units are:
 - a. Categorically needy income levels.
 - (1) Family coverage income levels established in the medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
 - (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.
 - b. Medically needy income levels.
 - (1) Medically needy income levels established in the medicaid state plan are applied when a medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size

is increased for each unborn child when determining the appropriate family size.

- (2) The nursing care income level shall be fifty dollars per month and applied to a resident receiving care in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or receiving swing-bed care in a hospital.
- (3) The community spouse income level for a medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

c. Poverty income level.

- (1) The income level for pregnant women and children under age six is equal to one hundred and thirty-three percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (2) Qualified medicare beneficiaries. The income level for qualified medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (3) The income level for children aged six to nineteen is equal to one hundred percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

- (4) The income level for transitional medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (5) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (6) The income level for specified low-income medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (7) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (8) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (9) The income level for children with disabilities is two hundred percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

- a. A child who is away at school is not treated as living independently, but shall be allowed the appropriate income level for one during all full calendar months. This is in addition to the income level applicable for the family unit remaining at home.
- b. A child who is living outside of the parental home, but who is not living independently, or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, shall be allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. No separate income level is otherwise available.
- c. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall

be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

- d. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed fifty dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
- e. For an institutionalized spouse with an ineligible community spouse, the fifty dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- f. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- g. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes

and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-41. Deeming of income. Excess income is the amount of net income remaining after allowing the appropriate disregards, deductions, and medicaid income level.

1. Twenty-five percent of the excess income of an ineligible medicaid unit shall be deemed available during any full calendar month an eligible member of the medicaid unit receives services in a specialized facility.
2. No income may be deemed to a supplemental security income recipient in a specialized facility or receiving home and community-based services as such a recipient's maintenance needs are met by the supplemental security income grant.
3. If subdivision a or b applies, the excess income of an individual in nursing care, an intermediate care facility for the mentally retarded, the state hospital, or the Anne Carlsen facility, receiving swing bed care in a hospital or receiving home and community-based services may be deemed to the individual's legal dependents to bring their income up to the appropriate medically needy income level.
 - a. The legal dependents who are also eligible for medicaid do not receive a temporary assistance for needy families payment or supplemental security income. In these circumstances, income may be deemed only to the extent it raises the legal dependents' income to the appropriate medically needy income level.
 - b. The legal dependents are ineligible for medicaid or choose not to be covered by medicaid. In these circumstances, income may be deemed only to the extent it raises the legal dependents' net income to the appropriate community spouse or family member income level.
 - (1) Income of the institutionalized or home and community-based spouse may be deemed to an ineligible community spouse

only to the extent that income is made available to the community spouse.

- (2) Excess income shall be deemed to family members in spousal impoverishment cases, up to the family members' income level.
4. The excess income of a spouse or parent may not be deemed to a recipient to meet medical expenses during any full calendar month in which the recipient receives nursing care services in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, the Anne Carlsen facility, or a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, receives swing bed care in a hospital, or receives home and community-based services. Income of any eligible spouse or parent shall be deemed to an individual who is ineligible for supplemental security income, up to the appropriate income level.
5. For purposes of determining eligibility for workers with disabilities or children with disabilities coverage, income of a spouse or parent may be deemed to a nonsupplemental security income spouse or child, who is in the medicaid unit, but who is not residing with the applicant or recipient, to bring their income up to the appropriate workers with disabilities or children with disabilities income level.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

CHAPTER 75-02-02.2

75-02-02.2-12. Income considerations.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available.
2. It is presumed that all parental income is actually available to a child under twenty-one years of age. This presumption may be rebutted by a showing that the child is:
 - a. Living independently; or
 - b. Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing plan coverage.
3. As a condition of eligibility, an applicant, recipient, and financially responsible relative must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old-age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.
 - a. Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.
 - b. Application for needs-based payments such as social security supplemental security income benefits or temporary aid to needy families benefits cannot be imposed as a condition of eligibility.
4. The financial responsibility of any individual for any other member of the plan unit will be limited to the responsibility of spouse for spouse and parents for children under age twenty-one or under age eighteen if the child is disabled. Such responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this section, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents, but not stepparents, are treated as parents.

5. Income may be received weekly, biweekly, monthly, intermittently, or annually. A monthly income amount must be computed by the department or county agency regardless of how often income is received.
6. The following types of income must be disregarded in determining eligibility for plan coverage:
 - a. Supplemental security income benefits provided by the social security administration.
 - b. Income disregards in ~~subdivisions a through q and s through nn of subsection 1~~ of section 75-02-02.1-38.2.
7.
 - a. In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:
 - (1) Income shall be considered available only to the individual if payment of the income was made solely to that individual; and
 - (2) Income shall be considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.
 - b. One-half of income shall be considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.
 - c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in subsection 6.
8. To determine the appropriate income level for a plan unit:
 - a. The size of the household is increased by one for each unborn child of a household member;
 - b. A child who is away at school is not treated as living independently, but is allowed a separate income level for one in addition to the income level applicable for the family unit remaining at home;
 - c. A child who is living outside of the parental home but who is not living independently; or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an

employer, or for other reasons beyond the control of the spouse, is allowed a separate income level. This does not apply to situations in which an individual simply decides to live separately;

- d. An individual in a specialized facility is allowed a separate income level for one during all full calendar months in which the individual resides in the facility;
 - e. An individual in a nursing facility is allowed a separate income level for one; and
 - f. A recipient of home and community-based services is allowed a separate income level for one.
9. In order for a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below one hundred forty percent of the federal poverty line based on the size of the household unless federal children's health insurance program funding decreases in which case the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-13. Determining household income.

- 1. Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received.
 - a. Recurring unearned lump sum payments received after application for medicaid under chapter 75-02-02.1 or the children's health insurance program shall be prorated over the number of months the payment is intended to cover. When a payment is received and prorated in an ongoing case, or after a period of medicaid or children's health insurance program eligibility, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue.
 - b. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.

- c. One-twelfth of the annual amount of lease payments not otherwise required to be disregarded under section 75-02-02.1-38.2 deposited in individual Indian moneys accounts by the bureau of Indian affairs is income in each month and shall be determined:
 - (1) By totaling all payments in the most recent full calendar year and dividing by twelve;
 - (2) By totaling all payments in the twelve-month period ending with the previous month and dividing by twelve; or
 - (3) If the applicant or recipient demonstrates, by furnishing lease documents or reports, that the deposit amount will be substantially different than the annual amount which would be determined under subdivision a or b, by totaling all payments likely to be made in the twelve-month period beginning with the month in which the lease arrangement changed and dividing by twelve.
2. Earned income is income that is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment. Income is earned only if the individual or family contributes an appreciable amount of personal involvement and effort to the production of that income. Earned income shall be applied in the month in which it is normally received. If earnings from more than one month are received in a single payment, the payment must be divided by the number of months in which the income was earned and the resulting monthly amounts shall be attributed to each of the months with respect to which the earnings were received.
3. Self-employment income must be calculated as follows:
 - a. Self-employment income must be calculated based on the previous year of self-employment ~~and if taken from the federal income tax return. If the previous year's tax return has not been filed, the year prior to that year's tax return must be used.~~ If the plan unit fails to qualify for plan eligibility, the self-employment income must be calculated based on the average of the previous three years of self-employment from that business. If the previous year's tax return has not been filed or the business has been in operation for less than three consecutive years, the actual number of years of business operation must be used use the income tax returns from the previous three years that have been filed to calculate the average yearly income.
 - b. Monthly self-employment income is one-twelfth of the business income or loss calculated from an individual's income tax form 1040 and capital gains or losses related to self-employment

business, less one-twelfth of the adjusted gross income deduction from page one of the individual's income tax form 1040. If a unit has more than one self-employment business, only one adjusted gross income deduction is allowed.

- c. For a business that has been operating for less than a full tax year, monthly self-employment income is the business income or loss from the individual's income tax form 1040 and capital gains and losses related to the self-employment business, divided by the number of months the business has been in operation and less one-twelfth of the adjusted gross income deductions from page one of the individual's income tax form 1040. If a plan unit has more than one self-employment business, only one adjusted gross income deduction is allowed.
- d. For a business that is not included on a tax return or if the most recently available federal income tax return does not accurately predict income because the business has been recently established, has been terminated, has been subjected to a severe change such as an uninsured loss, or a decrease or increase in the size of the operation, income statements, business records and ledgers reflecting income and expenses must, or any other reliable information may be used to calculate monthly compute self-employment income.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-13.1. Income deductions. The following deductions must be subtracted from monthly income to determine adjusted gross income:

- 1. For household members with countable earned income:
 - a. Actual mandatory payroll deductions, including federal, state, or social security taxes or ninety dollars per month, whichever is greater;
 - b. Mandatory retirement plan deductions;
 - c. Union dues actually paid; and
 - d. Expenses of a nondisabled blind person, reasonably attributable to earning income;
- 2. Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training; ~~and~~

3. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments if actually paid by a parent on behalf of an individual who is not a member of the household;
4. With respect to each individual in the unit who is employed or in training, thirty dollars as a work or training allowance, but only if the individual's income is counted in the eligibility determination;
5. The cost of premiums for health insurance may be deducted from income in the month the premium is paid or may be prorated and deducted from income in the months for which the premium affords coverage. This deduction applies primarily for premiums paid for health insurance coverage of members in the unit who are not eligible for this plan coverage. For eligible members, this deduction may be allowed if the health insurance coverage is not creditable coverage for hospital, medical, or major medical coverage; and
6. The cost of medical expenses for necessary medical or remedial care for members of the unit who are not eligible for this plan coverage.

History: Effective August 1, 2005; amended effective April 1, 2008.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

CHAPTER 75-02-04.2
STATE DISBURSEMENT UNIT

Section

75-02-04.2-01

Definitions

75-02-04.2-02

Fees for Child Support Enforcement Services

75-02-04.2-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 14-09 or 50-09 unless the context indicates otherwise. In addition:

1. "Child support case" means the combination of a noncustodial parent or putative father, custodial parent, and children in common.
2. "IV-D case" means a child support case that is serviced by the child support agency under title IV-D.
3. "Non-IV-D case" means a child support case that is not serviced by the child support agency under title IV-D.

History: Effective October 1, 2007.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-02

75-02-04.2-02. Fees for child support enforcement services.

1. For purposes of this section, "year" means federal fiscal year.
2. Unless subsection 3 applies, an individual who is an obligee in a IV-D case and who has never received assistance under the aid to families with dependent children program or temporary assistance for needy families program and for whom the child support agency has collected and disbursed at least five hundred dollars in child support in any given year will be assessed an annual fee of twenty-five dollars. The child support agency will retain the fee from child support collected on behalf of the obligee.
3. An obligee in a IV-D case is exempt from the fee assessed under subsection 2 if:
 - a. The child support agency is providing services as a responding jurisdiction in an interjurisdictional case; or
 - b. The obligee is a medicaid recipient who has opted out of child support enforcement services.
4. Unless subsection 5 applies, an individual who is an obligee in a non-IV-D case, or who is an obligee in a IV-D case but who has opted out of child support enforcement services, and for whom child support

has been received in a given month will be assessed a monthly fee of two dollars and ten cents or the amount of child support received for that month, whichever is less. The child support agency will retain the fee from support received.

5. A non-IV-D case is exempt from the fee assessed under subsection 4 if the case is a former IV-D case that was closed by the child support agency because:

a. The obligor's location was unknown;

b. The obligor was institutionalized in a psychiatric facility, incarcerated with no chance of parole, or has a medically verified total and permanent disability with no evidence of support potential; or

c. The obligor was a citizen and resident of a foreign country with which the state does not have reciprocity.

History: Effective October 1, 2007.

General Authority: NDCC 50-06.3-02, 50-09-02

Law Implemented: NDCC 14-09-09.36, 50-06.3-02; 42 USC 654(6)(B)(ii)

CHAPTER 75-02-06

75-02-06-03. Depreciation.

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.
 - a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.
 - b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.
 - c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
2. Depreciation methods.
 - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.
 - b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:
 - (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or

- (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
 - c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
 - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) A composite remaining useful life for movable equipment, determined from the seller's records.
3. Acquisitions.
 - a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.
 - b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.
6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden

of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

- a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:
 - (1) Purchase price paid by the purchaser;
 - (2) Fair market value at the time of the sale; or
 - (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.
- b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.
- c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.
- d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.
- e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.
- f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.

9. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.
7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.
 - a. ~~The Effective August 1, 2007, the per bed limitation basis for double occupancy must be calculated averaging the cost basis reported on the June 30, 1994, cost report, as adjusted by the consumer price index for all urban consumers, United States city average, all items, to June 30, 1995, for nonstate-owned facilities with construction of new occupancy space completed on or after January 1, 1990, and before July 1, 1994 is \$88,872 and for a single occupancy is \$133,308.~~
 - b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by ~~1.34~~ 1.5.
 - c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.
 - d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.
 - e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.
 - f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.
 9. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992;

November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

CHAPTER 75-03-17

75-03-17-01. Definitions.

1. "Applicant" means the entity requesting licensure as a psychiatric residential treatment center facility for children under this chapter.
2. ~~"Center" means a residential treatment center for children~~ "Child" or "children" means a person or persons under the age of twenty-one.
3. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery provided by qualified mental health professionals.
4. "Department" means the department of human services.
5. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.
6. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.
7. "Initial license" means a license for a new facility that is in effect for one year.
8. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota state board of psychology psychologist examiners;
 - b. A social worker with a master's degree in social work from an accredited program;
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program;
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse, as defined by subdivision c, or an expert examiner;
 - e. A licensed addiction counselor; or
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully

completed the advanced training beyond a master's degree, as required by the national academy of mental health counselors, or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.

8. 9. "Mentally ill person" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded person of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is mentally retarded may suffer from a mental illness. Chemical dependency does not constitute mental illness, although an individual suffering from that condition may be suffering from mental illness.
9. ~~"Program plan" means a center's plan for delivering its services and providing treatment.~~
10. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four-hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must be in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441.
11. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomat in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.
11. 12. "Residential treatment" means a twenty-four-hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.
12. ~~"Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents, a total, twenty-four-hour, therapeutic environment integrating group~~

~~living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting.~~

13. "Special treatment procedures" are defined as follows:

- a. "Drug used as a restraint" means any drug that:
 - (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
 - (2) Has a temporary effect of restricting the resident's freedom of movement; and
 - (3) Is not a standard treatment for the resident's medical or psychiatric condition.
- b. "Emergency safety interventions" means the use of restraint or seclusion as an immediate response to an emergency safety situation.
- c. "Emergency safety situation" means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.
- d. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident cannot easily remove that restricts freedom of movement or normal access to the resident's body.
- e. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort the resident, or holding a resident's hand to safely escort a resident from one area to another.
- f. "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.
- g. "Restraint" means a personal restraint, mechanical restraint, or drug used as a restraint.

- h. "Seclusion" means the voluntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.
- i. "Serious injury" means any significant impairment of the physical condition of the resident as determined by qualified medical personnel. This includes burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.
- j. "Timeout" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-01, 25-03.2-03

75-03-17-02. Procedures for licensing.

1. **Application.** An application for license or for renewal as a center facility must be submitted to the department which shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials that the department may require, including:
 - a. An architectural plan;
 - b. A comprehensive description of the program plan which includes:
 - (1) A plan demonstrating compliance with this chapter;
 - (2) The treatment modalities offered, including milieu therapy, family therapy, ~~chemotherapy~~ psychopharmacology, and psychotherapy;
 - (3) Prohibited treatment modalities; and
 - (4) The services provided directly by the facility and those provided by other community resources, including special education as required by law;
 - c. The funding base for building and operating the center facility, including a projected twelve-month budget based on predictable funds and, for a new center facility, a statement of available funds or documentation of available credit sufficient to meet the operating costs for the first twelve months of operation; and

- d. A copy of all policies required by this chapter.
 - e. A list of qualified mental health professionals and mental health professional staff employed by the facility.
 - f. The license to operate a psychiatric residential treatment facility for children must specify:
 - (1) The name of the licensee;
 - (2) The premises to which the license is applicable;
 - (3) The number of children who may be received in the premises at any one time; and
 - (4) The date of expiration of the license.
2. ~~License renewal.~~ An application for license renewal must be submitted sixty days before the license expires and must describe any changes that have modified the physical plant, program plan, funding base, or professional competence since the granting or previous renewal of the license.
3. ~~Initial license and license renewal.~~ An initial license for a new facility is in effect for one year. When a license is renewed, it may be issued for two years. Subsequent licenses shall be renewed every two years, either through a full onsite license review or the facility may receive deemed status, at the discretion of the department. The license must identify the number and age groupings of residents children who may receive care, is valid only on the premises indicated, and is not transferable.
3. Provisional license. A facility may receive a provisional license for ninety days if the facility has failed to comply with any of the standards of this chapter or other state law or regulation is cause for issuance of a provisional license. The facility will have ninety days from the issuance of the provisional license to submit a written plan of correction for the department's review and approval. The department may perform an onsite followup visit to assure that the standards have been met by the facility.
4. Denial and revocation of a license. Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

5. **Appeal.** An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-05

75-03-17-03. Organization and administration.

1. **Governing body.** The applicant must have a governing body that ~~is responsible~~ designates or assigns responsibility for the operation, policies, program, and practice of the center facility. The governing body shall:
 - a. Define:
 - (1) The center's facility's philosophy;
 - (2) The center's facility's purpose;
 - (3) The center's facility's function;
 - (4) The geographical area served by the center facility;
 - (5) The ages and types of residents children accepted for care by the center facility; and
 - (6) The clinical disorders addressed by the center's facility's program;
 - b. Ensure that all policies required by this chapter are in writing and on file at the center facility;
 - c. Develop a records retention policy consistent with state and federal law;
 - d. Assure that all vehicles transporting residents children are:
 - (1) Subject to routine inspection and maintenance;
 - (2) Licensed by the state motor vehicle department;
 - (3) Equipped with seatbelts for every passenger;
 - (4) Equipped with a first-aid kit and a fire extinguisher;

- (5) Carrying no more individuals than the manufacturer's recommended maximum capacity;
 - (6) Disability accessible where appropriate; and
 - (7) Driven by an individual who holds a valid driver's license, of a class appropriate to the vehicle driven, issued by the driver's jurisdiction of residence; and
- e. Obtain sufficient insurance, including:
- (1) Liability insurance covering bodily injury, property damage, personal injury, professional liability; and
 - (2) Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. **Legal status.** The applicant shall provide to the department:
- a. A copy of the articles of incorporation, bylaws, partnership agreement, or articles of organization and any evidence of required legal registration of the entity;
 - b. A current list of partners or members of the governing body and any advisory board, including the address, ~~phone~~ telephone number, principal occupation, and term of office of each listed person; ~~and~~
 - c. A statement disclosing the owner of record of any building, facility, or major piece of equipment occupied or used by the applicant, the relationship of the owner to the applicant, the cost of such use, if any, to the applicant, and the identity of the entity responsible for the maintenance and upkeep of the property; and
 - d. Whether the owner, operator, or an employee of the facility is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determined, following conviction of an offense, that the person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
3. **Financial plan.** The applicant shall have a financing plan which includes a twelve-month budget, and which shows the ~~center's~~ facility's financial ability to carry out its purposes and function. A new applicant shall have sufficient funds available for the first year of operation.
4. **Audits.** All financial accounts must be audited annually by a certified public accountant. The report must be made a part of the ~~center's~~

facility's records and contain the accountant's opinion about the ~~center's~~ facility's present and predicted financial solvency. The report must be submitted with an application for license renewal.

5. **Quality assurance.** The applicant shall have a quality assurance program that monitors and evaluates the quality and appropriateness of resident child care, and provides a method for problem identification, corrective action, and outcome monitoring. The quality assurance program must include:
 - a. A plan for resident child and staff safety and protection;
 - b. A method to evaluate personnel performance and the utilization of personnel;
 - c. A system of credentialing, granting, and withholding staff privileges;
 - d. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;
 - e. A method to review the appropriateness of admissions, care provided, and staff utilization;
 - f. A plan for the review of individual treatment plans;
 - g. A plan for program evaluations that includes measurements of progress toward the ~~centers'~~ facility's stated goals and objectives; and
 - h. A method to evaluate and monitor standards of resident care.

6. **Resident's Children's case records.** The applicant shall maintain a confidential resident record for each resident child which must be current and reviewed monthly. Each record must contain:
 - a. An application for service;
 - b. A social history;
 - c. A medical treatment consent form signed by a person who may lawfully act on behalf of the resident child and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07;
 - d. The name, address, and ~~phone~~ telephone number of individuals to be contacted in an emergency;

- e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric examinations;
- f. An explanation of custody and legal responsibility for the resident child and relevant court documents, including custody or guardianship papers; ~~and~~
- g. A record of the medical care given at the facility, including:
 - (1) Hospitalization records;
 - (2) Prescriptions used, with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated;
and
 - (3) Significant illnesses or accidents; and
- h. A written agreement between a person who may lawfully act on behalf of the resident child and the center facility and a record that the person who acted on behalf of the resident child received a copy. The agreement must include:
 - (1) A statement as to who has financial responsibility;
 - (2) How payments are to be made to cover the cost of care;
 - (3) Which items are covered by the normal or regular center facility charges for care;
 - (4) Medical arrangements, including the cost of medical care;
 - (5) Visiting arrangements and expectations;
 - (6) Arrangements for clothing and allowances;
 - (7) Arrangements for ~~vacations~~ therapeutic leave;
 - (8) Regulations about gifts permitted;
 - (9) Arrangements for participation by the person who acted on behalf of the resident child through regularly scheduled interviews with designated staff;
 - (10) The center's facility's policy on personal monetary allowance to be provided to the resident child at the center facility; ~~and~~
 - (11) Records of special treatment orders; and

(12) Educational arrangements.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-04. Admissions.

1. A child may be admitted to a psychiatric residential treatment facility for children if the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and is able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The facility shall take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all children. The center facility may admit only those prospective residents children who are found eligible according to the center's facility's admission policies. Every center facility shall have specific admission policies that describe which professional staff have admission authority and describe the membership of the center's facility's admission committee or committees. Admission committee membership must include a psychiatrist.
2. a. Admission decisions must be based upon:
 - (1) A social history which includes presenting problems, family background, developmental history, educational history, and employment;
 - (2) A medical history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the prospective resident's child's current medications and allergies and the facility will provide for a medical and psychological assessment of each child within seventy-two hours of admission and thereafter as needed by the child; and
 - (3) Prior psychological and addiction evaluations.
- b. The known history and prior evaluations ~~must~~ should be obtained before admission, ~~except when emergency care must be given,~~ and if not obtained before admission, then the information must be ~~obtained~~ requested within three working days after admission.
3. The center facility shall grant or deny admission within fourteen days of receipt of a completed application.

4. If admission is denied, the center facility shall indicate the reason in writing.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-06

75-03-17-05. Diagnosis and treatment while at the center facility.

1. **Duties of the center facility.** The center facility shall:
 - a. Keep the resident child in contact with the resident's child's family and relatives if possible;
 - b. Involve the parents families in the treatment plan if possible;
 - c. Provide or arrange for family therapy when necessary;
 - d. Provide conferences involving the center facility, the person who may lawfully act on behalf of the resident child, the referring agency, and when appropriate, the resident child, to review the case status and progress on a monthly basis; and
 - e. Provide a progress report to the referring agency, and the person who acted on the resident's child's behalf every three months; and
 - f. Complete a written biopsychosocial assessment for each child admitted for care within five business days and develop an individual treatment plan.
2. **Specialists.** The services of specialists in the fields of medicine, psychiatry, nursing, psychology, and education must be used as needed. Each center facility shall provide a minimum of one-half hour per week per bed of psychiatric time and twenty hours per week of nursing time.
3. **Individual treatment plan.**
 - a. The center facility shall develop and implement an individual treatment plan, ~~and provide clinical supervision for the individual treatment plan.~~ The plan must be based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the therapeutic activities and treatment, provides a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifies the individuals responsible for providing services to children consistent with the individual treatment plan. Clinical supervision for the individual treatment plan must be accomplished

by full-time or part-time employment of or contracts with qualified mental health professionals. Clinical supervision must be documented by the qualified mental health professionals cosigning individual treatment plans and by entries in the child's record regarding supervisory activity. To the extent possible, the resident child, and the person who acted on the resident's child's behalf, must be involved in all phases of developing and implementing the individual treatment plan.

b. The plan must be:

- (1) Based on a determination of a diagnosis using the first three axes of the multiaxial classification of the current Diagnostic and Statistical Manual of Mental Disorders (~~DSM-IV~~), ~~which must be completed within five days of admission and a biopsychosocial assessment.~~ In cases where a current diagnosis by a mental health professional ~~based on a DSM-IV classification~~ has been completed within thirty days preceding admission, only updating is necessary;
- (2) Developed within five business days of admission; and
- (3) Reviewed at least monthly and updated or amended, as deemed necessary, to meet the needs of the child by an interdisciplinary team including one qualified mental health professional.

c. The plan must identify:

- (1) Treatment goals to address the problems of the resident child and family;
- (2) Timeframes for achieving the goals;
- (3) Indicators of goal achievement;
- (4) The individuals responsible for coordinating and implementing resident child and family treatment goals;
- (5) Staff intervention or techniques or both for achieving the resident's child's treatment goals;
- (6) The projected length of stay and next placement; and
- (7) When referrals are made to other service providers, and the reasons referrals are made.

4. **Work experience.**

- a. If a center facility has a work program, it shall:
 - (1) Provide work experience that is appropriate to the age and abilities of the resident child;
 - (2) Differentiate between the chores that residents children are expected to perform as their share in the process of living together, specific work assignments available to residents children as a means of earning money, and jobs performed in or out of the center facility to gain vocational training; and
 - (3) Give residents children some choice in their chores and offer change from routine duties to provide a variety of experiences.
 - b. Work may not interfere with the resident's child's time for school study periods, play, sleep, normal community contacts, or visits with the resident's child's family.
5. **Solicitation of funds.** A center facility may not use a resident child for advertising, soliciting funds, or in any other way that may cause harm or embarrassment to a resident child or the resident's child's family. A center facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any resident child or member of a resident's child's immediate family, without first securing the resident's child's written consent and the written consent of the person who may lawfully act on behalf of the resident child. The written consent must apply to an event that occurs no later than ninety days from the date the consent was signed and must specifically identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information. Consent documents that do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes. The duration of an event identified in a consent document may not exceed fourteen days.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-06. Special treatment procedures. A facility shall have written procedures on special treatment procedures. Special treatment procedures must not be used for punishment, for the convenience of staff, or as substitute for therapeutic programming. The facility shall provide education to the children, providing instructions on alternative behaviors that would have allowed the staff to avoid the use of special treatment procedures. Physicians shall review the use of special treatment procedures.

1. ~~Timeout.~~ Use of timeout procedures must be supervised by staff at all times, and appropriate entries must be ~~made~~ documented in the ~~resident's~~ child's file.
2. Physical escort. Use of physical escort procedures shall be supervised by staff at all times and appropriate entries shall be documented in the child's file.
3. ~~Safety holds~~ Physical restraints. ~~A center shall apply the following procedures in using safety holds:~~
 - a. ~~A resident may be held only when:~~ Restraints are imposed only in emergency circumstances and only to ensure the immediate physical safety of the child, a staff member, or others and less restrictive interventions have been determined to be ineffective. The health, safety, and well-being of the children cared for and treated in the facility must be properly safeguarded;
 - (1) ~~Withholding this intervention would be contrary to the best interest of the resident; and~~
 - (2) ~~Less restrictive alternatives have failed;~~
 - b. All safety holds must be applied by staff trained in the use of safety holds; and
 - c. ~~Staff~~ The facility staff shall have established protocols that require:
 - (1) ~~Make entries~~ Entries made in the resident's child's file as to the date, time, staff involved, reasons for the use of, and the extent of safety holds physical restraints;
 - (2) ~~Notify~~ Timely notification within twenty-four hours of the individual who may lawfully act on behalf of the resident child; and
 - (3) ~~Educate the resident, providing instructions on alternative behaviors that would have allowed the staff to avoid the use of safety holds with the resident~~ Face-to-face assessment of children in restraint must be completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions. The face-to-face assessment must include assessing the mental and physical well-being of the child. The face-to-face assessment must take place as soon as possible, but in no case later than one hour after the initiation of restraint or seclusion.

- ~~3- 4.~~ 4. ~~Seclusion or locked timeout.~~ Seclusion may be imposed only in emergency circumstances and only to ensure the immediate physical safety of the child, a staff member, or others and after less restrictive interventions have been determined to be ineffective. If ~~seclusion or locked timeout~~ is indicated, the center facility shall ensure that:
- a. The proximity of the staff allows for visual and auditory contact with the resident child at all times and includes assessments every fifteen minutes;
 - b. All nontherapeutic objects are removed from the ~~resident's~~ child's presence;
 - c. All fixtures within the room are tamperproof, with switches located outside the room;
 - d. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;
 - e. Mattresses are security mattresses of fire-resistant material;
 - f. The room is properly ventilated;
 - g. ~~Applicable entries are made in the resident's file~~ Timely notification within twenty-four hours of the individual who may lawfully act on behalf of the child;
 - h. A resident child under special treatment ~~orders~~ procedures is provided the same diet that other ~~residents~~ children in the ~~center facility~~ are receiving;
 - i. No resident child remains in isolation ~~for more than~~ seclusion:
 - (1) ~~Four~~ For more than four hours in a twenty-four-hour period; and
 - (2) ~~One-half hour without supervisory approval; or~~
 - (3) ~~Two hours without~~ Without physician approval; and
 - j. ~~Physicians review the use of procedures.~~ Seclusion is limited to the maximum timeframe per episode for fifteen minutes for children aged nine and younger and one hour for children aged ten and older;
 - k. Physicians shall review the use of seclusion procedures; and
 - l. Face-to-face assessment of children in seclusion is completed by a physician, registered nurse, or other licensed health care

professional or practitioner who is trained in the use of safety, emergency interventions. The face-to-face assessment must include assessing the mental and physical well-being of the child. The face-to-face assessment must take place as soon as possible, but in no case later than one hour after the initiation of restraint or seclusion.

5. Following each use of seclusion, a debriefing must be conducted within twenty-four hours that includes appropriate personnel and the child and:
 - a. Evaluates and documents in the child's file the well-being of the child served and identifies the need for counseling or other services related to the incident;
 - b. Identifies antecedent behaviors and modifies the individual treatment plan as appropriate; and
 - c. Analyzes how the incident was handled and identifies needed changes to procedures or staff training, or both.
6. Special treatment procedure training. Each facility must have a specific training in the use of physical restraints and seclusion, which includes training on the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, conflict resolution, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continuation of restraints and seclusion, documentation, debriefing techniques, and investigation for injuries and complaints.
7. Reporting requirement for serious injury or death.
 - a. Each facility shall notify the department of each death that occurs at each facility.
 - b. The report must include the name of the child.
 - c. The report must be provided no later than twenty-four hours after the time of the child's death.
 - d. The report must contain information on the use of seclusion or restraints as related to the child.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 50-11-03, 50-11-03.2

75-03-17-07. Medical care.

1. **Medical examination.** Each resident child shall have a medical examination within thirty days prior to admission or within seventy-two hours of admission.
2. **Immunizations.** A resident child shall have current immunizations as required by North Dakota Century Code section 23-07-17.1.
3. **Medical care arrangements.** A center facility shall make arrangements with a physician and a psychiatrist for medical and psychiatric care of residents children.
4. **Annual medical examination.** Every resident child shall have a medical examination annually.
5. **Staff instruction.** The center facility shall inform staff members as to what medical care, including first aid, may be given by staff without specific orders from a physician. Staff shall be instructed as to how to obtain further medical care and how to handle emergency cases.
 - a. At least one staff member on duty shall have satisfactorily completed current first aid, therapeutic crisis intervention and crisis prevention intervention, universal infection control precautions, and cardiopulmonary resuscitation training and have on file at the center facility a certificate of satisfactory completion.
 - b. Each staff member shall be able to recognize the common symptoms of illnesses of residents children and to note any marked physical defects of residents children. A sterile clinical thermometer and a complete first-aid kit must be available.
6. **Hospital admission.** Arrangements must be made with a hospital for the admission of residents children from the center facility in the event of serious illness or an emergency.
7. **Medical records.** A resident's child's medical records must include:
 - a. Current medical, psychological, or psychiatric records;
 - b. A record of the resident's child's immunizations;
 - c. The consent for medical care by a person with lawful authority to act on behalf of the resident child;
 - d. Records of the annual medical examination; and
 - e. A record of the medical care given at the center facility, including:

- (1) Hospitalization records;
 - (2) Prescriptions used with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and
 - (3) Significant illnesses or accidents.
8. **Hospitalization or death reports.** Any accident or illness requiring hospitalization must be reported immediately to an individual who may lawfully act on behalf of the resident child. Deaths must immediately be reported to the department, an individual who may lawfully act on behalf of the resident child, a law enforcement agency, and the county coroner.
9. **Prescription labels.** Prescribed drugs and medicines must be obtained on an individual prescription basis with the following labeling:
- a. The name of the pharmacy;
 - b. The resident's child's name;
 - c. The prescription number;
 - d. The prescribing practitioner;
 - e. The directions for use;
 - f. The date of original issue or renewal;
 - g. The name of the drug;
 - h. The potency of the drug;
 - i. The quantity of the drug; and
 - j. The expiration date, when applicable.
10. **Administration of medications.**
- a. Medications must be administered by a designated staff person in accordance with medical instructions. All medications must be stored in a locked cabinet, with the keys for the cabinet kept under the supervision of the designated staff person assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with the resident's child's name.

- b. Medications belonging to the client child must be returned to the person who may lawfully act on behalf of the resident child upon discharge, or must be destroyed in the presence of a witness by the designated person in charge of medication storage by flushing the medications into the sewer system and removing and destroying the labels from the container and documentation of the return or destruction must be included in the child's file.
- c. The center facility may possess a limited quantity of nonprescription medications and administer them under the supervision of designated staff.
- d. The center facility shall have policies governing the use of psychotropic medications. A person with lawful authority to act on behalf of a resident child who receives psychotropic medication must be informed of benefits, risks, side effects, and potential effects of medications. Written consent for use of the medication must be obtained from that person and filed in the resident's child's record.
- e. ~~A resident's~~ Upon admission, when a new psychotropic medication is prescribed, and when a psychotropic medication is discontinued, a child's psychotropic medication regime must be reviewed by the attending psychiatrist every seven days for the first thirty days and every thirty days thereafter.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-08. Dental care. Each resident child shall have an annual dental examination. If a resident child has not had an examination in the twelve months prior to admission, an examination must ~~occur~~ be scheduled within ninety days of admission.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-09. General health.

- 1. **Sleep.** Each resident child shall have enough sleep for the resident's child's age at regular and reasonable hours, and under conditions conducive to rest. ~~While residents are asleep, at least one staff member shall be within hearing distance.~~

2. **Personal hygiene.** Residents Children shall be encouraged and helped to keep themselves clean.
3. **Bathing facilities.** Bathing and toilet facilities must be properly maintained and kept clean.
4. **Personal articles.** Each resident child shall have a toothbrush, comb, an adequate supply of towels ~~and~~, washcloths, and personal ~~toilet~~ toiletry articles.
5. **Daily diet.** Menus must provide a varied diet that meets a resident's child's daily nutritional requirements.
6. **Clothing.** Each resident child shall have clothing for the resident's child's exclusive use. The clothing must be comfortable and appropriate for current weather conditions.
7. **Play.** The ~~center~~ facility shall provide safe, age-appropriate equipment for indoor and outdoor play. The facility shall provide safety instructions on all equipment prior to the child participating in the activity.
8. **Services.** The facility shall provide sufficient treatment, educational, recreational and leisure, and physical services and facilities must be available to the children in the facility.
9. **Spirituality.** The facility shall make a reasonable effort to make opportunities available for children to attend spiritual ceremonies within the area in which the facility is located, giving reasonable consideration to requests by the child or a person with lawful authority to act on behalf of the child. The facility shall respect the spiritual beliefs of the child and the child's family.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-10. Education and training.

1. **Public education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The ~~center~~ facility shall ensure that residents children comply with all state school attendance laws.
2. ~~**Religious education**~~ **Staff training.** ~~The center shall make a reasonable effort to make opportunities available for residents to attend religious ceremonies within the area in which the facility is located, giving reasonable consideration to requests by the resident or a person with lawful authority to act on behalf of the resident. The center shall~~

~~respect the religious beliefs of the resident and the resident's family. The facility shall provide annual training to staff which is relevant to the needs of the client population.~~

3. **Discipline.** Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, and discussion with the resident child about the situation, and praise for appropriate behavior, ~~and safety holds~~. A center facility shall adopt and implement written policies for discipline and behavior management consistent with the following:
 - a. Only ~~adult~~ staff members of the center facility may prescribe, administer, or supervise the discipline of residents children. Authority to discipline may not be delegated to residents children, volunteers, or interns.
 - b. A resident child may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or otherwise receive any inappropriate physical treatment.
 - c. Verbal abuse and derogatory actions or remarks about the resident child, the resident's child's family, religion, or cultural background may not be used or permitted.
 - d. A resident child may not be locked in any room or other enclosure unless seclusion is indicated and the procedures under section 75-03-17-06 are followed.
 - e. The center facility shall request that a person with lawful authority to act on behalf of the resident child to assist the center facility in the development of effective means of discipline.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-11. Residents Children as employees prohibited. Residents Children may not be solely responsible for any major phase of the center's facility's operation or maintenance, including cooking, laundering, housekeeping, farming, or repairing.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-12. Discharge.

1. The decision that a resident child no longer needs or cannot benefit from the center's facility's treatment must be made by a discharge committee comprised of three staff or consultants involved in the resident's child's care and treatment and a person with lawful authority to act on behalf of the resident child.
2. The center facility shall assist the resident child and the person with lawful authority to act on behalf of the resident child in preparing for termination of placement in the center facility, whether the move is to return the resident child home, to a foster family, adoptive family, an institution, or to the home of relatives.
3. Prior to discharge, the center facility shall complete a discharge plan and coordinate facility services and related community services with partial discharge plans with each child's family, school, and community to ensure continuity of care. The plan must include:
 - a. A progress report, including ~~a psychiatric update~~ an update on the child's psychiatric care and treatment recommendations;
 - b. The reason for discharge;
 - c. An assessment of the resident's child's and the family's needs and recommended services;
 - d. A statement that the discharge plan recommendations have been reviewed with the resident child and a person with lawful authority to act on behalf of the resident child;
 - e. The potential for readmission; and
 - f. The name and title of the individual to whom the resident child was discharged.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-13. Responsibility for notification of runaway residents children. When a center facility confirms that a resident's child's whereabouts are unknown, the center facility shall immediately notify law enforcement officials and the individual who may lawfully act on behalf of the resident child. The resident's

child's return must be reported immediately to law enforcement and the individual who may lawfully act on behalf of the resident child.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-14. Employee health qualifications.

1. All personnel, including volunteers and interns, must be in good health and physically and mentally capable of performing assigned tasks.
2. Except as specified in subsection 4, the good physical health of each employee must be verified by a health screening, including a test for tuberculosis, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment. The individual performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to residents children of the center facility or other staff members.
3. Unless effective measures are taken to prevent transmission, an employee suffering from a serious communicable disease shall be isolated from other employees and residents children of the center facility who have not been infected.
4. Information obtained concerning the medical condition or history of an employee must be collected and maintained on forms and in medical files separate from other forms and files and must be treated as a confidential medical record.
5. The center facility shall develop a policy regarding health requirements for volunteers, interns, and student placements that addresses tuberculin testing.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-04, 25-03.2-07

75-03-17-15. Staff to resident child ratio.

1. The ratio of staff to residents children during waking hours is dependent on the needs of the residents children and the requirements of the individualized treatment plans, but may not be less than two staff members. At night, night staff must be awake and within hearing distance of children and other staff must be available to be summoned in an emergency.

2. The ratio of professional staff to residents children is dependent on the needs of the residents children.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16. Personnel policies.

1. The center facility shall have clearly written personnel policies. The policies must be made available to each employee and must include:
 - a. A staff training and development plan;
 - b. Procedures for reporting suspected child abuse and neglect;
 - c. Procedures for staff evaluation, disciplinary actions, and termination;
 - d. A prohibition of sexual contact between staff and residents children in accordance with the Prison Rape Elimination Act of 2003 [Pub. L. 108-79];
 - e. Procedures for employee grievances;
 - f. Both oral and written instructions regarding employee responsibility for preserving confidentiality;
 - g. Evaluation procedures that include a written evaluation following the probationary period for new staff and at least annually thereafter; and
 - h. A plan for review of the personnel policies and practices with staff participation at least once every three years, or more often if necessary.
2. A center facility operator may not be, and a center facility may not employ, in any capacity, that involves or permits contact between the employee and any resident child of the center facility, any individual who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault;

12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting - prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- b. An offense, other than an offense identified in subdivision a, if the department, in the case of the center facility operator, or the center facility, in the case of an employee, determines that the individual has not been sufficiently rehabilitated.
3. A center facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 2.
4. For purposes of subdivision b of subsection 2, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
5. The department has determined that the offenses enumerated in subdivision a of subsection 2 have a direct bearing on the individual's ability to serve the public as a center facility operator or employee.
6. Interns, volunteers, and student placement workers are subject to the provisions of this section.
7. A prospective employee shall consent to and have completed background checks in criminal conviction records and child abuse or neglect records prior to direct care and contact with children residing in the facility. ~~Where a position involves transporting residents by motor vehicle, the prospective employee shall authorize release of a complete motor vehicle operator's license background report.~~
8. When a position involves transporting children by motor vehicle, the prospective employee must authorize release of a complete motor vehicle operator's license background report.
9. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or ~~centers facilities~~, the center facility shall request a reference from all previous group home, residential child care facility, and center facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

- 9- 10. The department may perform a background check for reported suspected child abuse or neglect each year on each center facility employee.
- 10- 11. A center facility shall maintain an individual personnel file on each employee. The personnel file must include:
- a. The application for employment, including a record of previous employment, and the applicant's answer to the question, "Have you been convicted of a crime?";
 - b. Annual performance evaluations;
 - c. Annual staff development and training records, including first-aid training, cardiopulmonary resuscitation training, universal ~~infectious disease~~ infection control precautions training, and ~~crises~~ therapeutic crisis intervention or crisis prevention and intervention training records. "Record" means documentation, including with respect to development or training presentations the:
 - (1) Name of presenter;
 - (2) Date of presentation;
 - (3) Length of presentation; and
 - (4) Topic of presentation;
 - d. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records;
 - e. Any other evaluation or background check deemed necessary by the administrator of the center facility; and
 - f. Documentation of the existence of any license or qualification for position or the tasks assigned to the employee; and
 - g. All direct care staff not currently under orientation status must have satisfactorily completed first aid, therapeutic crisis intervention or crisis prevention intervention, universal infection control precautions, and cardiopulmonary resuscitation and have on file at the facility a certificate of completion.
- 11- 12. A center facility shall maintain an individual personnel file on each volunteer, student, and intern. The personnel file must include:
- a. Personal identification information; and

- b. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records.

~~12.~~ 13. The center facility shall adopt a policy regarding the retention of personnel records.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16.1. Child abuse and neglect reporting.

1. All center facility employees, interns, volunteers, and student placement workers shall certify having read the law requiring the reporting of suspected child abuse or neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the center's facility's written child abuse and neglect reporting procedures.
2. The center facility shall adopt written procedures requiring an employee to report cases of suspected child abuse and neglect. The procedures must include the following statements:

All employers shall comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. It is the policy of this center facility that an employee who knows or reasonably suspects that a child in residence has been, or appears to have been, harmed in health or welfare as a result of abuse, neglect, or sexual molestation shall immediately report this information to the regional human service center in the region in which the center facility is located.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee to the office of the state's attorney for investigation of possible criminal violation.

3. The center's facility's procedure must address:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain;
 - e. The status of an employee who is the alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;

- f. The discipline of an employee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and
 - g. The status and discipline of an employee who fails to report suspected child abuse or neglect.
4. The center facility shall cooperate fully with the department throughout the course of an investigation of an allegation of child abuse or neglect concerning care furnished to a resident child. The center facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the center facility and reasonably relevant to the investigation, and shall permit confidential interviews with both staff and residents children.

History: Effective September 1, 1998; amended effective April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-17. Center Facility staff.

1. The center's facility's staff shall include:
 - a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;
 - b. A program director who has a master's degree in social work, psychology, or in a related behavioral-science field with two years of professional experience in the treatment of children ~~and adolescents~~ suffering from mental illnesses or emotional disturbances;
 - c. Resident Facility care staff who are at least twenty-one years of age and have sufficient training and demonstrated skills experience to perform assigned duties;
 - d. The clinical services of a psychologist, psychiatrist, alcohol and drug addiction counselor, nurse, and physician, which may be obtained on a consultation basis; and
 - e. Educators, where onsite education is provided.
2. Volunteer services may be used to augment and assist other staff in carrying out program or treatment plans. Volunteers shall receive

orientation training regarding the program, staff, and ~~residents~~ children of the center facility, and the functions to be performed.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-18. Safety, buildings, and grounds.

1. **Compliance with fire, sanitation, and zoning standards.** An applicant shall demonstrate compliance with applicable state or local fire, sanitation, and zoning standards. The premises to be used must be in fit, safe, and sanitary condition and properly equipped to provide good care and treatment.
 - a. **Fire.** For fire safety, the center facility shall meet the applicable life safety standards established by the city. If the city has not established life safety standards, the center facility shall comply with chapter 21 of the Life Safety Code of the national fire protection association, 1985 edition, and amendments thereto.
 - (1) Compliance is shown by submitting the written report of an authorized fire inspector, following an initial or subsequent inspection of a building which states the:
 - (a) Rated occupancy and approval of the building for occupancy; or
 - (b) Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy.
 - (2) All electrical and heating equipment must be approved by underwriters laboratories, incorporated, or another nationally recognized testing laboratory.
 - b. **Sanitation.** Compliance with sanitation standards is shown by submitting a statement prepared by a licensed environmental health professional or authorized public health officer, following an initial or subsequent annual inspection, that the building's plumbing, sewer disposal, water supply, milk supply, and food storage and handling comply with the applicable rules of the state department of health.
 - c. **Zoning.** Compliance with zoning requirements is shown by submitting a statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances.

2. **Safety.** Safety requirements of a center facility must include:
 - a. Prohibition of smoking on the premises;
 - b. Procedures for water safety where swimming facilities are on the grounds;
 - c. A copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and first-aid supplies;
 - d. Prohibiting a resident's child's possession and use of any firearms while at the center facility;
 - e. Advising residents children of emergency and evacuation procedures upon admission and thereafter every two months;
 - f. Training in properly reporting a fire, in extinguishing a fire, and in evacuation from the building in case of fire. Fire drills must be held monthly. Fire extinguishers must be provided and maintained throughout each building in accordance with standards of the state fire marshal; and
 - g. Telephones with emergency numbers posted by each telephone in all buildings that house residents children.
3. **Buildings and grounds.** The center facility must have sufficient outdoor recreational space, and the center's facility's buildings must meet the following standards:
 - a. Bedrooms. Each resident child must have: eighty square feet [7.43 square meters] in a single sleeping room, and sixty square feet [5.57 square meters] per individual in a multiple occupancy sleeping room; the resident's child's own bed, and bed covering in good condition; and a private area to store the resident's child's personal belongings. A center facility may not permit: more than two residents children in each sleeping room; residents children to sleep in basements or attics; nonambulatory residents children to sleep above the first floor; and a resident ~~six years of age or older~~ child to share a bedroom with a resident child of the opposite sex.
 - b. Bathrooms. The center's facility's bathroom facilities must have an adequate supply of hot and cold water; be maintained in a sanitary condition; have separate toilet and bath facilities for male and female residents children, and employees; and have one bathroom that contains a toilet, washbasin, and tub or shower with hot and cold water for every four residents children.

- c. Dining and living rooms must have suitably equipped furnishings designed for use by residents children within the age range of residents children served by the center facility.
 - d. The center facility shall provide sufficient space for indoor quiet play and active group play.
 - e. Adequate heating, lighting, and ventilation must be provided.
 - f. Staff quarters must be separate from those of residents children, although near enough to assure proper supervision of residents children.
9. A center facility shall provide a quiet area for studying.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-19. Interstate compact on the placement of children.

- 1. The center facility shall comply with the interstate compact on the placement of children and the interstate compact for juveniles.
- 2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles must comply with all North Dakota laws and rules prior to the arrival of a child at a center facility.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-06

75-03-17-20. Rights and obligations of the applicant.

- 1. **Right to apply for license.** An applicant has the right to apply to receive a license to operate a center facility under this chapter.
- 2. **Entry and inspection.** The applicant shall allow authorized representatives of the department to enter any of the applicant's buildings or facilities in order to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the center facility unless the effectiveness of the inspection would be substantially diminished by prearrangement.

3. **Access to records.** The applicant shall allow duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.
4. **Denial of access to facilities and records.** Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's or licensee's state of compliance with the rules of the department shall have its license revoked or application denied.
5. **License refusal or revocation.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children or that, following conviction of any offense, the person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
6. **Appeal.** An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.
7. **Deemed status.** The department recognizes "deemed status" for those providers who ~~have accreditation of~~ are accredited by nationally recognized bodies who review and certify providers of psychiatric residential treatment services for children. When applying for licensure or licensure renewal, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a program accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-07, 25-03.2-08, 25-03.2-09

CHAPTER 75-03-23

75-03-23-09. Payment under the SPED program and the medicaid waiver program.

1. The department shall establish provider rates for each home and community-based service in accord with a procedure that factors in:
 - a. Whether a provider is an individual or an agency;
 - b. The range of rates submitted by various providers; and
 - c. The average cost of county social service boards in delivering certain services.
2. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
3. A request for a rate decrease must be accepted at any time and granted when the department receives a written request for the decrease from the qualified service provider.
4. A request for a rate increase must be granted in full or in part, or denied, when the department receives a written request for the rate increase from the qualified service provider.
5. The department shall determine the maximum amount allowable per client each month for a specific service.
6. The department shall establish the aggregate maximum amount allowable per client each month for all services. The aggregate maximum amount per client depends on whether the client is receiving services under the SPED program, under the medicaid waiver program, or under both programs.
7. The department or designee may grant approval to exceed the monthly service program maximum for a specific client who is only receiving SPED funds and no medicaid funds if:
 - a. The client has a special or unique circumstance;
 - b. The SPED client is not eligible for medicaid; and
 - c. The need for additional service program funds will not initially exceed three months.

Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.

8. The department may grant approval to exceed the monthly service program maximum for a specific client who is receiving SPED funds and medicaid funds or only medicaid funds if:
 - a. The client has a special or unique circumstance;
 - b. The need for additional service program funds does not exceed three months; and
 - c. The total need for service program funds per month must not exceed the aggregate monthly maximum amount for a client who receives services under both the SPED program and the medicaid waiver program, excluding home and community-based services case management.

Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.

9. The county social service board shall notify the client of the department's determination. If the department denies the request to exceed the monthly aggregate maximum, the county social service board shall inform the client in writing the reason for the denial, the right to appeal, and the appeal process, as provided for in chapter 75-01-03.
10. Providers are limited to a maximum of two hundred hours of care per month, unless an emergency or unusual circumstances is determined by the county social service board. The county social service board shall submit a written request to exceed the monthly aggregate maximum or the monthly service maximum before authorizing any service in excess of the maximum monthly amount. The department shall provide written notice of its decision to the county social service board and the qualified service provider.
11. The department will grant approval to exceed the monthly program maximum or service maximum for individuals receiving SPED funds or medicaid funds, or both, whose service units exceed the program caps as a result of the qualified service provider rate increase. This extension is limited to individuals who were receiving services prior to July 1, 2007.

History: Effective June 1, 1995; amended effective September 27, 2007.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

TITLE 86
DEPARTMENT OF VETERANS AFFAIRS

APRIL 2008

CHAPTER 86-03-01

86-03-01-01. Application for admission - Form, content, approval.

1. ~~Application must be made on forms provided by the veterans' home~~ will be submitted to the North Dakota veterans' home basic or skilled care unit.
 - a. ~~The financial statement is a part of the application and all information requested must be included in the application.~~
 - b. ~~The applicant must be examined by a physician whose findings shall become a part of the application and recorded under the caption "Medical Certificate" of the application.~~
 - c. ~~If a member of the board of admissions determines that insufficient medical, psychiatric, or financial information is available to properly process the application, a release of information form must~~ an authorization to disclose information form shall be sent to the applicant to be signed and returned so that additional specific information may be obtained.
 - d. b. ~~A certificate verification of residency must be signed by an elected or appointed county official of the county of residence at the time of application. An individual seeking admission to the home does not lose legal residency of the county of residence at the time of admission to the home. If the applicant entered the service from North Dakota, and this state received credit for the applicant's service, the residency requirement shall be waived if the applicant is not a resident of this state at the time application is made~~ prior to admission.
2. The completed application for residency, together with the ~~discharge copy of DD form 214 (discharge paper)~~ or certificate of service from the last period of service in the armed forces, must will be forwarded to the commandant admissions coordinator who shall submit the

application and discharge papers to the board of admissions for action. Upon approval, the applicant ~~must~~ may be admitted for residency. ~~The priorities for admission must be in accordance with North Dakota Century Code section 37-15-10.1.~~

3. An applicant whose application for admission has been approved, shall ~~report to the home between eight a.m. and four p.m.,~~ contact the admissions coordinator within thirty days of receipt of the applicant's acceptance letter to schedule admission to the North Dakota veterans' home. An admission date will be scheduled Monday through Friday, holidays excluded. Special arrangements must be made if an the applicant wishes to report at on any other time day. Applicants whose applications for admission have been approved, and who fail to ~~report~~ contact the admissions coordinator within thirty days from of the date of their acceptance, unless letter shall be denied admission until another medical assessment has been submitted and approved or an extension has been approved, must be denied admission until another application has been submitted and approved granted by the North Dakota veterans' home administrator or the administrator's designee.

4. Admission to the basic care facility must be according to the following list of priorities, so long as the individual meets the admissions requirements:
 - a. Residents of the North Dakota veterans' home skilled care unit in need of basic care.

 - b. Veterans with service-connected disability or complications from a service-connected disability.

 - c. American ex-prisoners of war.

 - d. Discharged North Dakota national guard members who became disabled in the line of duty.

 - e. Veterans.

 - f. Spouses and surviving spouses of veterans.

5. Admissions to the skilled nursing facility must be according to the following list of priorities, so long as the individual meets admission requirements:
 - a. Skilled nursing residents who have been medically discharged.

 - b. Residents of North Dakota veterans' home basic care unit in need of skilled nursing care.

- c. Former residents of North Dakota veterans' home basic care unit who have been medically discharged and placed into an outside skilled nursing home.
- d. Veterans with a service-connected disability or complications from a service-connected disability.
- e. American ex-prisoners of war.
- f. Discharged North Dakota national guard members who became disabled in the line of duty.
- g. Spouses and surviving spouses of veterans.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-15-10, 37-15-10.1

86-03-01-02. Admission eligibility requirements.

1. ~~All residents must voluntarily choose to reside at the home, as the home is not staffed or equipped to accept an individual committed by a court.~~ An applicant must come within the definition of "domiciliary care" "basic care" as defined in the North Dakota Century Code section ~~37-15-00.1~~ 23-09.3-01 to be eligible for admission to the basic care unit of the home. No applicant ~~may~~ shall be considered eligible for residency whose last period of service in the armed forces was terminated under dishonorable conditions.
2. No applicant may be admitted to the home who has been convicted of a felony or a crime involving moral turpitude, without producing sufficient evidence of subsequent good conduct and reformation of character so as to be satisfactory to the board of admissions. An applicant who has a history of chronic alcoholism or drug addiction may be accepted only if the problem is under control as determined by a home physician or addiction counselor and assurance is received from the applicant that prescribed medical advice shall be followed after admission to the home. Stipulations for admission shall be contained in the acceptance letter. ~~An applicant who has a history of substance abuse shall become involved in counseling programs, evaluation periods, or other stipulations as a requirement for admission.~~
3. ~~An applicant who is eligible for Medicare must be enrolled in the program to assist the applicant in defraying the costs of hospitalization in the event that the applicant may become hospitalized while a resident of~~

~~the home. Applicants who are not eligible for Medicare when admitted, but become eligible while a resident, shall enroll in the program.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-00.1, 37-15-02, 37-15-03

86-03-01-03. Board of admissions - Composition, duties.

1. ~~The board of admissions shall consist of a multidisciplinary team with each member having specific as well as general items of concern to review in the application. All applications shall be processed by the board of admissions for action. The board of admissions shall consist of five members which include: the commandant, or the assistant commandant in the commandant's absence, a home physician, addiction counselor, a licensed or registered nurse, and a social worker. The commandant, or the assistant commandant in the commandant's absence, shall act as chairman of the board of admissions. The board of admissions shall consist of administration, social services, nursing, and an individual from a certified medical field.~~
2. ~~All members of the board shall review the medical records and application file completely before making a decision. Each board member shall make their decision on the merits of the submitted application, or additional information received, and shall be responsible for their decision. Each board member, with the exception of the commandant or assistant commandant, shall record their vote on a preprinted form. A decision for disapproval of the application must be fully documented. Board of admissions members will make their decision on the merits of the submitted applications.~~
3. Each board member, or the ~~assistant commandant~~ administrator's designee in the ~~commandant's~~ administrator's absence, with the exception of the ~~commandant~~ administrator, shall have one vote to accept or reject the application. If a tie vote occurs, or an application is disapproved, the ~~commandant~~ administrator, or the ~~assistant commandant~~ designee in the ~~commandant's~~ administrator's absence, shall call a meeting of the board and the reasons for denial shall be reviewed. The ~~commandant~~ administrator or ~~his~~ designee shall vote to break the tie, request additional information if sufficient information is not available to make a decision, or write a letter of denial to the applicant.

4. Processing of an application shall be completed within ten working days of receipt; provided the application is completed properly, and sufficient medical and financial information is available to make a determination.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2) 37-18.1-03(5)

86-03-01-04. Denial of admission - Appeal.

1. ~~If an application is disapproved, the applicant must be notified promptly. Any personal papers such as a will or honorable discharge must be returned to the applicant. All other information remains the property of this state. The applicant must be notified, in writing, as to the reason or reasons for denial of admission to the home. The applicant must also be given notice of the right to appeal the decision, and that any appeal must be in writing and received by the commandant within thirty days of the notice of denial of admission. Any appeal of the denial must contain a statement of the grounds for the appeal. The applicant must be notified, in writing, as to the reason or reasons for denial of admission to the home. The applicant must also be given notice of the right to appeal the decision, and that any appeal must be in writing and received by the administrator within thirty days of the notice of denial of admission.~~
2. Any notice of appeal received by the ~~commandant~~ administrator shall be reviewed and forwarded to the chairman of the ~~administrative committee on veterans' affairs~~ North Dakota veterans' home governing board. All documents submitted with the appellant's application for admission must also be forwarded to the ~~said~~ chairman. The ~~administrative committee on veterans' affairs~~ North Dakota veterans' home governing board must give the appellant at least forty-five days' notice as to the time, date, and place of the hearing of the appeal. This notice must be sent by certified mail return receipt requested. If the appellant is not satisfied with the decision of the ~~administrative committee on veterans' affairs~~ North Dakota veterans' home governing board, the appellant may appeal to a court under the procedures outlined in the Administrative Agencies Practice Act as set forth in North Dakota Century Code chapter 28-32.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 37-15-03, 37-15-10(3), 37-18.1-03(2) 37-18.1-03(5)

86-03-01-05. Admission orientation. Repealed effective April 1, 2008.

1. ~~All residents shall have a social intake completed upon admission. If any special requirements for admission were stipulated in the acceptance letter, they must be discussed upon admission. Any~~

~~additional recommendations made by the counselor must also be discussed. Any followup required of a new resident must be in writing and signed by the new resident. All new residents must be interviewed by medical, administration, housekeeping, food service, and resident services personnel to determine a new resident's needs, review procedures, and answer any questions.~~

- ~~2. New residents shall receive a temporary room assignment, and after a week or two, a permanent assignment must be made. During a new resident's stay in the temporary room, a resident must be assigned to assist in familiarizing the new resident with the home. A new resident must be given a limited physical examination. Various staff members shall visit with a new resident to inform the resident of the services provided by the various departments and to learn more about the new resident. The staff shall provide the new resident with opportunities to become acquainted with the home's facilities, staff, and other residents. After the initial orientation, a new resident must be assigned to a room with a roommate or roommates the staff determines to be the most compatible with the new resident from the prospective roommates available. However, if a resident has a specific request for a room change, it must be directed to the staff person responsible for room assignments. If a new resident is married, every effort must be made to allow the new resident and spouse to share a room.~~

History: ~~Effective May 1, 1987.~~

General Authority: NDCC 28-32-02

Law Implemented: ~~NDCC 37-15-03, 37-18.1-03(2)~~

86-03-01-06. Readmission requirements. A former resident may be readmitted if a new application has been submitted and approved by the board of admissions and all money ~~which may have been~~ owed to the home by the former resident has been paid or arrangements made for payment and approved by the board of admissions. ~~If the behavior of a former resident has resulted in a disciplinary or medical discharge, the former resident may readmitted only if the board of admissions is satisfied that the conduct leading to such discharge will not be repeated.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-15-10(3), 37-18.1-03(2) 37-18.1-03(5)

CHAPTER 86-03-02

86-03-02-01. ~~Membership contribution fund~~ Resident rent. A ~~membership contribution fee~~ Rent is based on the resident's ability to pay and on the rate structure established by the administrative committee on veterans' affairs ~~must be charged monthly. The rate structure varies in accordance with a resident's net income~~ rent is based upon a resident's income and allowable expenses, in accordance with the rent policy established by the administrative committee on veterans' affairs.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-15-14.1

86-03-02-02. Hospital emergency fund. Repealed effective April 1, 2008.

1. ~~Residents shall make a deposit, as determined by the administrative committee on veterans' affairs into the hospital emergency fund. The deposit may be made either in a lump sum or in the amount of twenty percent per month of the resident's net income until fully paid. Applicants who have no income and cannot make the deposit may not be denied admission because of the requirement. Residents may earn money through the home's work therapy program and may make payments into the fund from such earnings.~~
2. ~~Money from the hospital emergency fund deposit may be used, at the discretion of the commandant, to defray the cost of hospital care, drugs, ambulance fees, doctor fees, and other expenses which may arise in emergencies. Any part or all of the deposit may be expended on behalf of a resident if the resident is unable or unwilling to pay these costs. Residents are not allowed to make withdrawals from this account if they become "short of funds". If a resident is discharged, the balance of the resident's money in the account must be returned to the resident or the resident's guardian as outlined in subsection 3 of section 86-03-07-03. In the event of a resident's death, the balance of the resident's money in the account becomes part of the resident's estate for disposition in accordance with the laws of this state.~~
3. ~~Any resident with a full hospital emergency fund deposit on account on January first of each year, and maintains the full deposit on account during the year, will earn five percent interest.~~
4. ~~A resident who makes a full deposit at any other time during the year, or who withdraws from the fund, will not receive interest for that year.~~

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-02-03. Resident - Payment of charges. Residents have an obligation to pay charges which they incur at the home. Residents who become delinquent in paying these charges may be subject to discharge. Residents or their guardians are responsible for payment of monthly charges. ~~All payments must be made within thirty days following the month in which they were incurred. Residents shall pay their charges prior to going on leave. A resident who is hospitalized may wait until returning to the home before making payment.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

86-03-02-04. Resident income. Repealed effective April 1, 2008. ~~Residents who receive monthly income or who have net worth may handle their own finances unless they are declared incompetent. However, residents may not retain large sums of money on their person or in their quarters. If a resident chooses not to deposit money with a financial institution, the money may be deposited with the home's office for safekeeping. The resident may have access to those funds at any time during normal business hours as posted by the office.~~

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~

86-03-02-05. Annual review of resident finances - Basic care. Each resident's finances ~~must be~~ are reviewed annually in December of each year or as financial situations change. Generally, ~~the review must be after the veterans' administration income questionnaires have been returned to the veterans' administration, processed, and adjustments made.~~ Residents shall must declare all of their assets which include, but are not limited to, real estate, personal property, monthly income received, retirement checks, savings accounts, checking accounts, and certificates of deposit. A resident unable to furnish such information shall sign a release form to allow the home to obtain the necessary financial information it needs to complete the annual review. A resident who refuses to divulge such information is subject to discharge monthly income and expenses, and provide verification of amounts. When accurate information has not been furnished, the facility shall charge the maximum rent until such time as correct information is provided.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

CHAPTER 86-03-03

86-03-03-01. Medical services. Repealed effective April 1, 2008.

- ~~1. A new resident must be given an admission physical by a staff physician within ten days after arrival at the home. Each new resident shall have a chest X-ray taken or shall provide the results of a chest X-ray taken within one year of admission. Generally, a veteran will be sent to the veteran's administration hospital for a chest X-ray. A nonveteran who is unable to have a chest X-ray taken at the veterans' administration hospital shall assume the expense for obtaining a chest X-ray.~~
- ~~2. All residents must be given annual physicals by one of the home's staff physicians to detect any new medical problems.~~
- ~~3. A resident who is on medication shall turn the medication in to the infirmary; and the nursing supervisor or a staff physician shall determine whether the resident be placed on self-medication or whether the medications be dispensed from the infirmary. All prescription medications must be ordered through the infirmary. A resident may not order prescription medication without specific authorization by the nursing supervisor or a staff physician.~~
- ~~4. Residents on mood-altering drugs shall remain on them if deemed necessary by a staff physician. If a resident's failure to take the prescribed medication results in interference with the resident's behavior, it is grounds for an immediate discharge. Appropriate placement shall be recommended. If it becomes apparent that a resident presents a danger to self or others, emergency commitment procedures must be followed, and the resident must be sent to the state hospital.~~
- ~~5. If a resident requires medical attention due to a fever, symptoms of an infection, fall, or other medical problems, the nurse must be notified immediately. Appropriate steps must then be taken, either through treatment at the home by a staff physician, or transfer to the veterans' administration hospital or local hospital. All life-threatening emergencies must be referred to a local hospital first.~~
- ~~6. Residents who require outpatient care or inpatient treatment must be referred to the veterans' administration hospital unless they request otherwise. Nonveterans may choose where they wish to be treated.~~
- ~~7. Residents who have scheduled appointments shall notify the nurse of the appointment to ensure that the necessary followup is made.~~
- ~~8. Residents treated on an outpatient basis or who are hospitalized shall sign a release of medical information form, which is confidential and must be used to update the resident's medical file.~~

9. ~~Residents in need of dental care, eye examinations, physical examinations, speech therapy, occupational therapy, or other medical services are responsible for payment of such services with the exception of the admission physical and annual physical given by a staff physician. Residents who are ineligible for medication through the veterans' administration are responsible for the costs of their medication.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

86-03-03-02. Meal service policies. Repealed effective April 1, 2008.

1. ~~Residents must be provided three meals per day. Meals must be served at seven a.m., eleven-thirty a.m., and five p.m. Meals must be served cafeteria style, and residents shall carry their own tray unless the nursing supervisor or a staff physician has granted an exemption. To facilitate taking roll at meals, seats must be assigned.~~
2. ~~If a resident wishes to be excused from a meal, the nurse on duty or the office must be notified at least one hour before mealtime. A resident who wishes not to be present for a meal must check out in person and failure to do so must be treated as an unexcused absence subject to disciplinary action. An exception must be made for a resident who is unable to check out in person because of illness.~~
3. ~~A resident who wishes to extend an invitation to a meal shall obtain the consent of the commandant or a subordinate in charge.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

86-03-03-03. Mail - Basic care. Each resident must shall be assigned a mailbox at the home. Mail that a resident receives must should be properly addressed to the resident in care of the North Dakota veterans' home. ~~The home is responsible for most postal services for the residents. A resident may rent a mailbox at the local post office.~~

~~History: Effective May 1, 1987; amended effective April 1, 2008.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2) 37-18.1-03(5)~~

86-03-03-04. Laundry. Repealed effective April 1, 2008. A resident need not launder his or her own clothing as the home is equipped to launder all personal washable clothing. However, if a resident chooses to launder his or her own clothing, it must be done in the resident laundry area, where coin-operated washers and dryers are available. A resident may not use the laundry facilities

~~located in the washrooms or janitor closets at the home. A resident may not hang wet clothing on furniture, doors, or heat registers. Wet clothing must be dried in the resident laundry area in the dryers. A resident's clothing must be marked with a stamp provided by the home or with laundry tags ordered at the resident's own expense.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-03-05. Transportation.** Repealed effective April 1, 2008. The home furnishes limited transportation to the residents. Transportation is provided once a day to the Lisbon business district on business days. Transportation to Lisbon for medical purposes is furnished on an individual basis. Transportation to Fargo is provided by the home on Tuesdays and Wednesdays, and by the Ransom County seniors on Thursdays. Other transportation is the responsibility of the individual resident.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-03-06. Beauty and barber services.** Repealed effective April 1, 2008. A resident may utilize the services of local beauticians and barbers, provided that the resident is responsible for payment for such services. Transportation to a local beauty shop or barber shop shall be provided if arrangements cannot be made with the local beautician or barber to provide services at the home. However, in such event, a resident shall request a member of the staff to make the necessary appointment. A resident may not cut or trim another resident's hair unless the resident has a current barber or beautician license, and in addition, has received the approval of the commandant.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-03-07. Religious services.** Residents may or may not participate in a religious program of their choice. ~~Catholic and nondenominational services are conducted at the home.~~ Residents with individual preferences may attend a local church of their choice, with transportation being the responsibility of the resident.~~

~~History: Effective May 1, 1987; amended effective April 1, 2008.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2) 37-18.1-03(5)~~

**CHAPTER 86-03-04
RESIDENT ROOM POLICIES**

[Repealed effective April 1, 2008]

CHAPTER 86-03-05

86-03-05-01. Resident bill of rights - Responsibilities. Repealed effective April 1, 2008. The home has compiled a resident bill of rights which is available to all residents, guardians, next of kin, and other interested individuals upon request. Its purpose is to ensure residents of rights guaranteed to them in the Constitution of the United States. The home imposes the same responsibilities on a resident as citizens are subject to in any community. These responsibilities include: respecting the rights of others, obeying the rules, helping to keep the home safe and clean, and taking care of one's health. A resident must be courteous to visitors, friends, and staff. If a resident's behavior is disruptive or disgraceful, or affects the well-being and comfort of other residents, such behavior shall not be tolerated. Residents are asked to report safety hazards and keep themselves neat and clean, and to assume the major responsibility for personal health and hygiene.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-02. Resident dress code - Violations. Repealed effective April 1, 2008.

1. Clothing must be neat, clean, and mended. Pajamas, nightgowns, robes, or housecoats may not be worn to the dining room or first floor areas accessible to the public. White T-shirts, undershirts, and underwear must be adequately covered with an outer garment and may not be worn in the dining room as outerwear. Trousers, shirts, skirts, and blouses must be properly closed. Generally, residents may not wear shorts in the dining room unless they are Bermuda shorts or reach midthigh.
2. Hair curlers or clips may not be worn in the dining room at mealtime, and hair must be neatly groomed. Socks and shoes, which include boots, tennis shoes, and sandals, must be worn in the dining room. If neither shoes nor socks can be worn, permission must be received from the infirmary and cleared through food service before the resident is served.
3. Violations of the dress code must be reported to the food service supervisor or the commandant or his assistant. A resident violating the dress code must be refused dining room service.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-03. Smoking - Restrictions. Repealed effective April 1, 2008. Smoking is permitted in the home with the exception of the kitchen and dining room,

elevators, infirmary, front lobby, and other areas which are specifically marked. Residents may not smoke while in or on the beds.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-04. Use of alcohol or controlled substances - Prohibited.

Residents shall comply with the provisions of North Dakota Century Code section 48-05-06. ~~Intoxicating liquors or a controlled substance may not be used on the grounds or in the buildings. A resident's person, personal effects, car, and room may be searched if a staff member has reasonable cause to believe that a resident is under the influence of intoxicating liquors or a controlled substance, or is suspected of bringing contraband of any kind onto the grounds or into the buildings. A resident who is intoxicated or who brings liquor or other controlled substances onto the premises shall become involved in the home addiction program. A resident who refuses to do so is subject to immediate disciplinary discharge. A resident who is repeatedly intoxicated or found to have any alcoholic beverages or controlled substances on the premises is, without excuse, subject to discharge. A resident who is found to have any alcoholic beverages or controlled substances on the premises is subject to discharge and civil court for violation of North Dakota Century Code section 48-05-06.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2) 37-18.1-03(5), 48-05-06

86-03-05-05. Guests - Visitation. Repealed effective April 1, 2008.

~~A resident may have family or friends visit at the home. Guests may visit each day from eight a.m. to nine-thirty p.m. A resident shall remain with his or her guests. Residents and guests may visit either in the resident's room or in the visitor lounges. Residents and guests may play cards, and residents may treat their guests to coffee in the recreation room. However, visitors may not participate in home activities which include, but are not limited to, bingo, movies, and other events sponsored by outside groups or by the home itself. A resident is responsible for the behavior of the resident's guests, and visitors may be asked to leave if they become disruptive. A resident may invite guests to meals, provided that the resident pays a nominal fee for each meal, and that nursing or food service personnel are notified one hour before the meal is served.~~

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-06. Children - Visitation. Repealed effective April 1, 2008.

~~Children under eighteen years of age are not allowed in the building unless they are supervised by and remain with a staff member or an adult supervisor. Children visiting a resident unaccompanied by an adult visitor are allowed only in the lobby,~~

~~recreation rooms, and lounge areas where they can be supervised by a staff member.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-05-07. Resident council - Composition.** Repealed effective April 1, 2008. A resident council consisting of a delegate and alternate delegate from each floor must be elected by the residents and serve for a term of eight months. A chairman must be elected from the delegates and is the representative of the council to the administration.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-05-08. Monthly meetings.** Repealed effective April 1, 2008. Residents shall attend monthly meetings unless they are away on pass or leave. Generally, monthly meetings are scheduled for the third working day of each month, and are conducted by the commandant or a subordinate. The agenda for monthly meetings includes: announcements, observations, complaints, and other matters which may require discussion by staff or residents.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

86-03-05-09. Resident complaints - Appeals.

- ~~1. A resident who has a complaint may take it to the addiction counselor, activity therapist, chaplain, supervisors, aides, or administrative personnel. A complaint which cannot be resolved in this manner must be forwarded to the commandant for appropriate action.~~
- ~~2. A resident who has a complaint or problem with the home or staff may take it to the commandant during regular business hours. If a resident is dissatisfied with the commandant's response, the matter may be appealed to the administrative committee on veterans' affairs, provided that the appeal is in writing, contains reasons for the resident's dissatisfaction, and is submitted to the commandant within seven working days of the commandant's response.~~
- ~~3. The commandant shall forward the appeal together with his report, investigations, and other relevant data to the chairman of the administrative committee on veterans' affairs. The appeal must be reviewed at the next meeting of the administrative committee on veterans' affairs.~~

4. ~~A resident who is dissatisfied with the decision of the administrative committee on veterans' affairs may appeal the decision to a court under the procedures outlined in the Administrative Agencies Practice Act as set forth in North Dakota Century Code chapter 28-32. The regional ombudsman may be contacted at any time about a complaint or be asked to assist a resident in the complaint process. The North Dakota veterans' home will have formal complaint or grievance processes in place.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

CHAPTER 86-03-06

86-03-06-01. Canvassing - Peddling - Soliciting. Canvassing, peddling, or soliciting may not be conducted in the buildings or on the grounds of the veterans' home. However, the commandant administrator may authorize and establish conditions for solicitation at the home by charitable or veterans' organizations. Solicitations may not be made, in any event, from room to room.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

86-03-06-02. Searches to enforce home rules and state laws. The commandant administrator or other staff may examine automobiles, baggage, clothing, and other personal items if such examination is considered necessary to enforce the rules and regulations of the home and the laws of this state and is based upon a reasonable suspicion.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

86-03-06-03. Resident possession of firearms. A resident may not possess or ~~discharge~~ a firearm in the buildings or on the grounds of the home ~~without the permission of the commandant.~~ ~~A resident shall turn firearms and other weapons in to the commandant; failure to do so is grounds for a disciplinary discharge.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5), 62.1-02-05

86-03-06-04. Resident automobiles. Repealed effective April 1, 2008.

- ~~1. An applicant who wishes to have an automobile at the home shall make that desire known during the initial interview. The applicant's name must be placed on a waiting list and a parking space must be assigned when one becomes available. An applicant who has been admitted to the home may not bring an automobile to the home without receiving specific authorization prior to arrival.~~
- ~~2. A resident with an automobile at the home must show proof of a paid liability insurance premium and must possess a valid driver's license. Failure to comply with these requirements shall result in the loss of a parking space and loss of the privilege to have an automobile on the premises.~~
- ~~3. A resident may park in the resident parking lot only, and not in the public parking area or in front of or on the side of the barracks building.~~

4. ~~A resident convicted of driving under the influence shall automatically lose their parking space and remove the vehicle from the premises until such time as it is regranted at the discretion of the commandant.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-06-05. Riding of bicycles at the home.** Repealed effective April 1, 2008. Residents may ride their own bicycle or a bicycle provided by the home when weather permits. All cyclists shall remain on the main roadways or bicycle trails. Cyclists who have been advised of these requirements and who continue to disregard them must be reported to the commandant or his assistant.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-06-06. Use of the home's park.** Repealed effective April 1, 2008. Residents and their guests may use the home's park. Children who are unsupervised are not allowed in the park unless permission has been obtained from the commandant or other designated subordinates. Under no circumstances may bicycles be allowed in the area.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-06-07. Fishing on the premises.** Repealed effective April 1, 2008. A resident may fish in the Sheyenne River which borders the home's grounds; provided that the resident has purchased a fishing license in compliance with the laws of this state. Fish caught by a resident must be cleaned outside in an area away from the home's buildings. A resident shall obtain the approval of food service personnel before storing fish in the home's refrigerator or freezer.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-06-08. Off-limit areas.** Repealed effective April 1, 2008. Only authorized personnel may enter the home's kitchen or storage rooms. Residents may enter these areas only with the permission of staff members. A resident may not enter buildings on the grounds other than the barracks building unless it is in the line of duty or with the permission of the commandant or staff supervisors.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

86-03-06-09. Work details at the home. Repealed effective April 1, 2008. ~~A resident shall assist the commandant or other staff, when requested, in accomplishing work details at the home. No resident may be excused from a work detail without a written excuse from a staff physician.~~

History: ~~Effective May 1, 1987.~~

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

Law Implemented: ~~NDCC 37-15-03, 37-18.1-03(2)~~

86-03-06-10. Resident employment. Repealed effective April 1, 2008. ~~A resident physically present at the home may engage only in work assigned by the staff, and may not engage in any employment outside of the home. However, a resident on pass or leave may engage in employment.~~

History: ~~Effective May 1, 1987.~~

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

Law Implemented: ~~NDCC 37-15-03, 37-18.1-03(2)~~

CHAPTER 86-03-07

86-03-07-01. Hours. Repealed effective April 1, 2008.

1. ~~A resident may not arise before five-thirty a.m. creating a disturbance in the various wards and corridors to the annoyance and discomfort of others. Radios and televisions in the lounges may not be operated after ten-thirty p.m. unless special permission has been obtained. Radios and televisions in resident rooms may be operated any time, provided that it is agreeable with roommates and no one else is disturbed. Residents who are unable to sleep and do not want to disturb their roommate may watch television all night in the recreation room on the ground floor of the new addition to the home.~~
2. ~~The home must be locked and all public access lights with the exception of the emergency lights must be turned out at ten p.m. Special arrangements may be made with the aide on duty for a resident to remain out until twelve a.m. on occasion. Residents who desire to remain out later than twelve a.m. may obtain a twenty-four-hour pass, and may not return to the home before six a.m. the following day.~~

History: Effective May 1, 1987.

General Authority: NDGC 28-32-02

Law Implemented: NDGC 37-15-03, 37-18.1-03(2)

86-03-07-02. Passes and leaves. Repealed effective April 1, 2008.

1. ~~A resident may obtain a pass for a maximum of ninety-six hours from the commandant or other designated staff member. Residents going on pass or leave must sign themselves out before leaving, and upon returning to the home, must sign themselves in and report to the infirmary. A resident may not return to the home prior to six a.m. or after ten p.m. A resident returning from pass or leave shall remain at the home for twenty-four hours or more before being granted another pass or leave.~~
2. ~~A resident absent without leave for a period of twenty-four hours must be issued a disciplinary discharge. A resident may be on regular leave for a maximum of one hundred twenty consecutive days. Prior to going on leave, a resident shall sign out, and at that time, must be issued a leave slip. During a leave period a resident's papers must be left in the care of the commandant. A resident going on leave may place personal effects in storage or shall sign a waiver releasing the home from responsibility for the loss of items which are left in the resident's room. The home assumes no financial or personal responsibility for a resident on pass or leave.~~
3. ~~A resident who wishes a longer leave than one hundred twenty consecutive days shall return to the home prior to the leave expiration~~

~~date and obtain another leave slip from a staff physician during the physician's regular visit to the home. A resident who fails to return to the home to obtain another leave slip must be discharged. A resident who chooses not to return within the one hundred twenty days shall notify the home and request a discharge. Failure to do so shall result in the resident receiving a disciplinary discharge as absent without leave.~~

- ~~4. A leave may be extended in special circumstances. Outside employment of a resident, or avoidance of hardship may be considered by the commandant in granting extensions. However, the extensions may not be granted if other applicants have been denied and are awaiting admission to the home due to lack of space.~~
- ~~5. A resident who is admitted to a hospital must be placed on medical leave for a maximum of sixty consecutive days, after which a medical discharge must be issued. After receiving a medical discharge, an individual need only resubmit a medical certificate provided by the home. An individual must reapply for admission prior to discharge from the hospital or follow the regular application procedure.~~
- ~~6. Enforced disciplinary leaves may be issued by the commandant for infringement of the home's rules and regulations.~~

History: ~~Effective May 1, 1987.~~

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

Law Implemented: ~~NDCC 37-15-03, 37-18.1-03(2)~~

86-03-07-03. Discharges.

- ~~1. A resident may obtain an honorable discharge at any time upon request.~~
- ~~2. The commandant administrator may issue a disciplinary thirty-day notice of discharge for infringement of the veterans' home's rules and regulations. Arrest and or conviction of a resident, or conduct of a resident off the premises that would be considered unacceptable by community standards, felony are grounds for disciplinary discharge. Issuance of a disciplinary discharge by the administrator for disciplinary reasons disqualifies a resident from gaining readmission to the home for six months thereafter and requires submission of another application and medical certificate. A resident who receives a disciplinary discharge must leave the premises immediately, unless specific authorization is obtained from the commandant to remain overnight.~~
- ~~3. Upon discharge, a resident's resident needs to remove personal property must be returned to the resident and must then be removed from the buildings and grounds from the grounds within thirty days. Money credited to a resident shall be released only after all outstanding bills have been paid.~~

4. ~~A resident must be given a medical discharge, if in the opinion of the commandant, the resident is no longer able to care for his or her personal needs. Prior to discharge, every effort must be made to place a resident. A resident refusing placement is responsible for making his or her own arrangements after discharge.~~

5. ~~Under the rules and regulations prescribed by the administrative committee on veterans' affairs for admission and residency at the North Dakota veterans' home, when a resident can no longer care for their personal needs, the resident shall become a charge of the county of residence at the time of admission to the home.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

CHAPTER 86-03-08

86-03-08-01. Borrowing of money prohibited. Repealed effective April 1, 2008. A resident may not borrow from, nor loan money to another resident or staff member. A resident violating this rule is subject to discharge.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-08-02. Concealment and removal of state property - Prohibited. Repealed effective April 1, 2008. The concealment or removal of state property from the buildings or grounds is prohibited, and violators are subject to discharge and may be prosecuted for their actions.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-08-03. Disposition of personal property upon discharge.

1. A resident who is discharged and who has personal items remaining at the home must be notified in writing, at the resident's last known address, and shall have thirty days to remove those items from the premises. If a resident fails to make arrangements for the disposition of personal items remaining at the home within the allotted time thirty days, the commandant administrator may dispose of the property at his discretion using proper procedure.
2. A resident who receives a medical discharge must be notified in writing of personal items remaining at the home. These items must then be sent or delivered at the resident's own expense to the discharged resident or the named individual to be notified in the event of an emergency.

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2) 37-18.1-03(5)

86-03-08-04. Gift of property by a resident. Repealed effective April 1, 2008. A gift of property by a resident to a nonresident is invalid unless the donee received physical possession of the gifted property at the time of the gift, and such property has been removed from the home's premises prior to the death of the donor. A gift made by a resident to another resident or a nonresident during the donor's lifetime is invalid if made with the understanding that the resident donor may retain physical possession of the gifted property until the resident donor's death, or

~~if the gift is to take effect only upon the death of the resident donor. In these cases, such property becomes part of the estate of the resident donor.~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-08-05. Loan of property to a resident. Repealed effective April 1, 2008. Property loaned to a resident must be declared loaned property at the time possession is transferred to the resident. The lender at the time of transfer shall file a sales slip, invoice, or other evidence of ownership with the home's office. The lender shall attach an identifying tag to the loaned property which shall remain attached to the property during the resident's stay at the home. Loaned property not so identified becomes part of the deceased resident's estate.**~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

~~**86-03-08-06. Sale of property by a resident. Repealed effective April 1, 2008. Property sold by a resident to another resident or a nonresident must be declared at the time of transfer from the seller to the buyer. A sales slip, invoice, or other evidence of ownership which must include serial numbers, model numbers, or other identifying features shall be filed with the home's office. Any property sold by a resident, not so identified, becomes a part of the estate of the resident seller if the sale is questioned by the seller's next of kin.**~~

~~History: Effective May 1, 1987.~~

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

~~Law Implemented: NDCC 37-15-03, 37-18.1-03(2)~~

CHAPTER 86-03-09
DEATHS - WILLS - DISPOSITION OF ESTATES

[Repealed effective April 1, 2008]

CHAPTER 86-03-10

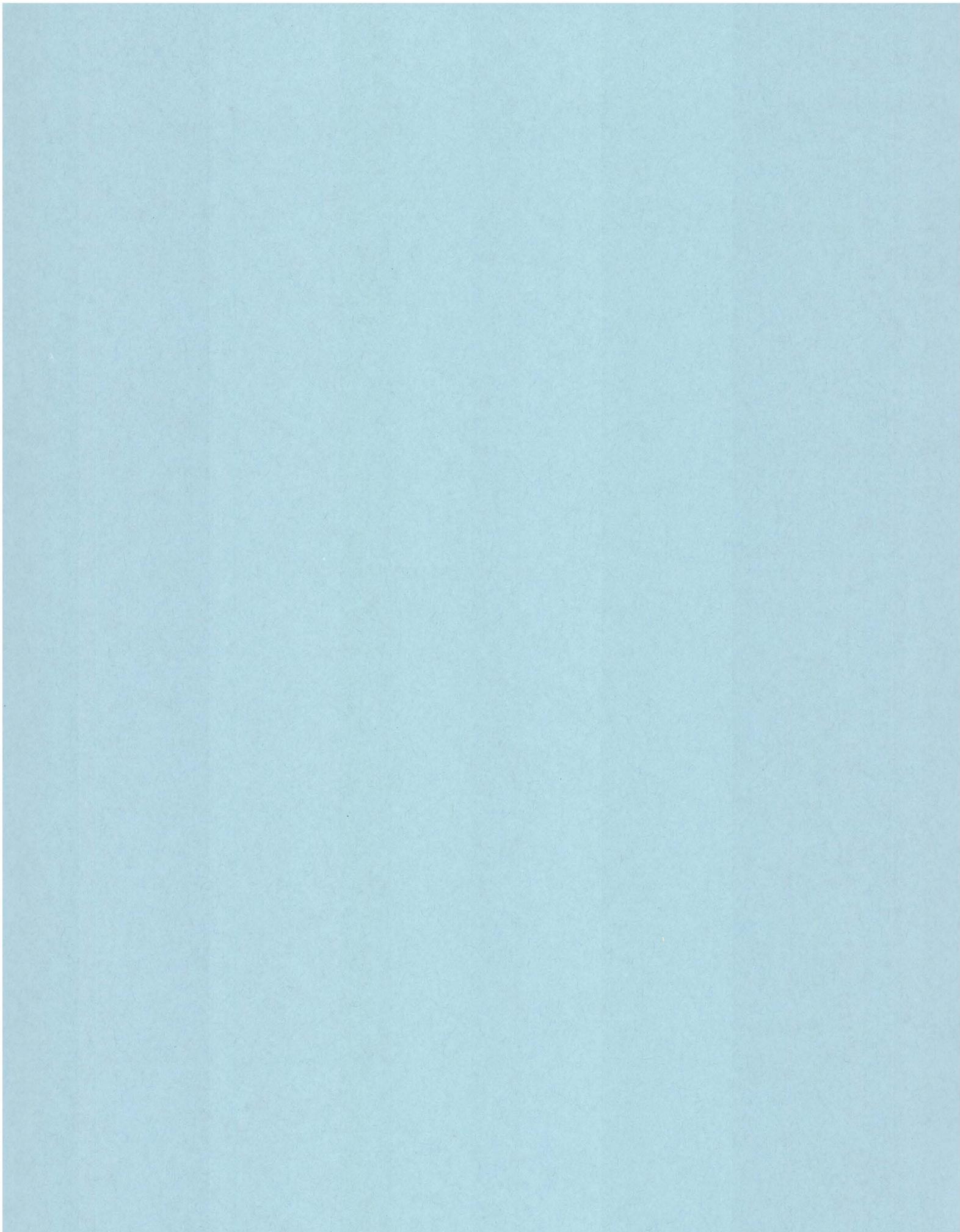
86-03-10-01. Violation - Enforcement of rules and regulations. The ~~commandant may make and~~ administrator shall enforce all necessary rules and regulations for the ~~government administration~~ of the home; ~~provided that such rules are not in conflict with the rules and regulations for admission and residency at the North Dakota veterans' home as promulgated by the administrative committee on veterans' affairs~~ North Dakota veterans' home governing board. The ~~commandant~~ administrator may discharge a resident or impose disciplinary action considered consistent with the nature of the offense committed for any willful violation of the rules and regulations for admission and residency at the North Dakota veterans' home. ~~A resident convicted of a felony must be discharged.~~

History: Effective May 1, 1987; amended effective April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, ~~37-18.1-03(2)~~ 37-18.1-03(5)

TITLE 89
STATE WATER COMMISSION



APRIL 2008

CHAPTER 89-10-01

89-10-01-01. Authority. These rules are adopted and promulgated by the state engineer pursuant to North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of the islands and beds of navigable ~~streams and~~ waters. These rules do not apply to the interests of the state of North Dakota in oil, gas, and related hydrocarbons.

History: Effective November 1, 1989; amended effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Grantee" means the person, including that person's assigns, successors, and agents who are authorized pursuant to an authorization.
3. "Navigable ~~streams or~~ waters" means any waters which were in fact navigable at time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water, including the Missouri River ~~in its entirety~~, the Yellowstone River ~~in its entirety~~, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, ~~and Devils Lake,~~ Painted Woods Lake, and Sweetwater Lake.
4. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation

or to restrict its growth to predominantly wetland species. Islands in navigable ~~streams and~~ waters are considered to be below the ordinary high watermark in their entirety.

5. "Project" means any activity which occurs either partially or wholly below the ordinary high watermark of navigable ~~streams or~~ waters.
6. "Riparian owner" means a person who owns land adjacent to navigable ~~streams or~~ waters or the person's authorized agent.
7. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-04. Authorization. Each project ~~which lies either partially or wholly below the ordinary high watermark of navigable streams or waters~~ requires an authorization from the state engineer prior to construction or operation, except as specified in sections 89-10-01-10 and 89-10-01-19.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-06. Application review. Upon receipt of a completed application, the state engineer shall initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The state department of health ~~and consolidated laboratories;~~
 - c. The state historical society;
 - d. The state land department;
 - e. The state parks and recreation department;
 - f. The United States fish and wildlife service;
 - g. The park district and planning commission of any city or county, if any part of the project is within the boundaries of the city or county;

- h. Any water resource district in which the proposed project will be wholly or partially located; and
 - i. Other agencies, private entities, and landowner associations as appropriate or required by law.
2. Each entity shall submit all comments in writing to the state engineer within thirty days of the date requests for comments were mailed. The state engineer is not bound by any comment submitted.
3. Upon completion of the review and any public meeting held pursuant to section 89-10-01-07, the state engineer may grant, deny, or condition the application.
4. The state engineer shall provide written notice of the decision on the application by certified mail or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the decision was served.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-08. General permit standards. The state engineer may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the state engineer shall consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;
4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality; and
10. Cultural and historical resources; and

11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-11. Structures below ordinary high watermark. ~~Excluding boats that are temporarily moored~~ Except as otherwise provided in this chapter, the construction or moorage of any residential structure or structure designed for human occupancy will not be permitted below the ordinary high watermark.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-12. Public recreational use. The public's right to use the islands and beds all land and water below the ordinary high watermark of navigable streams and waters for nondestructive, recreational purposes is not prohibited allowed except as otherwise provided by these rules.

History: Effective November 1, 1989; amended effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-13. Vehicular access. The use of motorized vehicles ~~other than boats on land~~ below the ordinary high watermark ~~is authorized in conjunction with the use of navigable waters for transportation or recreation, or as reasonably necessary for activities allowed pursuant to these rules.~~ water bodies is prohibited, except:

1. When on government-established trails that have been permitted by the state engineer;
2. When on sovereign land areas immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;
3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that must be submitted to the state engineer, and the managing government entity has obtained a sovereign land permit for off-road use in the designated area;
4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;

5. To launch or load a boat, canoe, or other watercraft in the most direct manner possible;
6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign land is in the most direct manner possible;
7. To access private land that has no other reasonable access point, provided that access across sovereign land is in the most direct manner possible;
8. By disabled persons who possess a totally or permanently disabled person's fishing license or shoot from vehicle permit;
9. When operation is necessary as part of a permitted activity or project;
10. By the riparian owner or the riparian owner's lessee on land below the ordinary high watermark that is adjacent to the riparian owner's property, provided it does not negatively affect public use or value; and
11. When being used by government personnel in the performance of their duties.

This section does not authorize use of property above the ordinary high watermark but ~~does authorize the use of trails established by a government agency, such as those established for snowmobiles, which are located below the ordinary high watermark.~~

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-14. Cancellation by the state engineer. The state engineer may cancel any authorization granted pursuant to these rules, including projects authorized by sections 89-10-01-10 and 89-10-01-19, ~~if the grantee fails to comply with any term or condition of the authorization or this article.~~ Cancellation does not release the grantee from any liability.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-21. Organized group activities. Organized group activities that are publicly advertised or are attended by more than twenty-five persons are prohibited without a permit issued by the state engineer.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-22. Pets. Pets may not be permitted to run unattended on sovereign land in and around the Missouri River between the railroad bridge near the south border of Fort Lincoln state park (approximately river mile marker 1,310) and the interstate 94 bridge (approximately river mile marker 1,315.4). Pets in this corridor of the Missouri River must be in the immediate control of their owner. A pet's solid waste must be disposed of properly.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-23. Camping. Camping for longer than ten consecutive days in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on any state sovereign land area.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-24. Hunting, fishing, and trapping. All sovereign land areas are open for public hunting, fishing, and trapping, except as provided in other rules and regulations or laws, or as posted at public entry points. Posting sovereign land with signage by anyone other than the state engineer is prohibited without a sovereign land permit.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-25. Unattended watercraft. Watercraft may not be left unattended on or moored to sovereign land for more than twenty-four hours except:

1. When moored to privately owned docks;
2. When moored to private property above the ordinary high watermark with a rope, chain, or other type of restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark; or

3. By riparian owners on land below the ordinary high watermark.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-26. Removal of public property. Trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, water, firewood, posts, poles, or other public property may not be removed from sovereign land without a permit issued by the state engineer, except that firewood may be removed under certain stated conditions from designated firewood cutting plots, and the riparian owner or the riparian owner's lessee may hay or graze land below the ordinary high watermark, unless prohibited in writing by the state engineer. Commercial cutting of firewood is prohibited on all sovereign land. Gathering of downed wood for campfires is permitted. Removal of property from sovereign land by permit shall only be in a manner, limit, and condition specified by the permit. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-27. Cultural or historical resources. Artifacts, or any other cultural or historical resources, occurring on sovereign land may not be disturbed or destroyed without formal written approval from the state historical society.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-28. Disposal of waste. The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited except in garbage containers where provided. Abandonment of vehicles or other personal property is prohibited. Holding tanks of campers or boats may not be dumped on sovereign land. Glass containers are prohibited on sovereign land.

History: Effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

CHAPTER 89-11-01

89-11-01-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Livestock producer" means an individual who produces livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to the activities of farming or ranching, and who normally receives not less than fifty percent of the individual's annual gross income from farming or ranching.
2. "Water supply project" includes ~~construction of new wells; construction of dugouts or stock dams that are spring-fed or have a high water table; pipelines, and rural water system connections; and the development of springs~~ the necessary components, and the installation, to transfer water from the water source to the drought-affected livestock.

History: Effective July 1, 1992; amended effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-02. Drought declaration required. No funds may be disbursed for any water supply project unless the county in which the water supply project is to be located is a county or is adjacent to a county that has been declared by the governor to be a drought disaster area for purposes of this program, or a drought disaster area under a drought declaration that has not been rescinded. The state water commission will determine a beginning and end date of the program.

History: Effective July 1, 1992; amended effective April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-03. Applicant eligibility.

1. The applicant must be a livestock producer with livestock water supply problems caused by drought.
2. The applicant must first apply for water cost-share assistance from the United States department of agriculture farm service agency ~~formerly known as the agricultural stabilization conservation service~~ and must have been denied such cost-share assistance.

History: Effective July 1, 1992; amended effective August 27, 2002; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-04. Funding - Priority - Eligible items.

1. The state water commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest date of application.
2. Cost-share assistance may only be used for water supply projects which will provide a ~~long-term immediate~~ solution to a drought-related water supply shortage.
3. All wells drilled with funds provided pursuant to this program must be drilled by a North Dakota certified water well contractor.
4. Eligible items include new water wells, rural water system connections, pipeline extensions, pasture taps, pumps, generators, electrical and solar hookups, and stock water tanks and labor, materials, and equipment rentals for work completed by the producer.
5. The applicant may receive up to fifty percent of the eligible costs of the project, but no more than three thousand five hundred dollars per project with a limit of three projects per applicant.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-05. Noneligible items. The following projects are not eligible for funding from the drought disaster livestock water supply project assistance program.

1. A rehabilitation of an existing well.
2. A water supply project on federal ~~or~~ land, state land, or land outside North Dakota.
3. A dry hole drilled in an attempt to construct a water well or to locate a water source.
4. ~~A water supply project started without prior approval of the state engineer.~~
5. The construction of stock dams or dugouts dependent upon runoff.
- 6- 5. Projects that require repair as a result of due to damage or failure to provide maintenance to an existing water source.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; July 21, 2006; April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-06. Application procedure.

1. Requests for assistance must be on a form provided by the state water commission and must include:
 - a. Written proof the applicant applied for cost-share assistance from the United States department of agriculture farm service agency formerly known as the agricultural stabilization conservation service and was denied such assistance including the reason for the denial.
 - b. An area map indicating the location of the proposed water supply project.
 - c. An estimate of the costs of the proposed water supply project.
 - d. Verification by the applicant that the applicant is a livestock producer.
2. The state engineer shall review applications and ~~approve or deny them~~ acknowledge their receipt. The state engineer shall, within the limits of available funding, provide assistance to those persons whose applications are approved. The applicant must agree to:
 - a. Complete the project within one hundred eighty days of receiving notification of approval of funding of the water supply project. The state engineer may grant an extension of time if a written request is submitted and just cause for an extension is provided.
 - b. Provide receipt of actual expenditures or an affidavit of work completed if work is done by the applicant, or both, if applicable.
 - c. Grant to the state water commission or anyone authorized by the state water commission the right to enter upon the land to inspect the completed water supply project after giving reasonable notice to the applicant.
 - d. Indemnify and hold harmless the state of North Dakota and the state water commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the applicant or applicant's agents or employees under this agreement.
3. Application forms may be obtained by contacting:

North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505
(701) 328-2750

www.swc.nd.gov

History: Effective July 1, 1992; amended effective August 27, 2002; July 21, 2006;
April 1, 2008.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

