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

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TITLE 4
MANAGEMENT AND BUDGET, OFFICE OF

JANUARY 2017

CHAPTER 4-07-13

4-07-13-07. Uses of sick leave.

Sick leave may be used by an employee when:

1. The employee is ill or injured and is unable to work.
2. The employee has an appointment for the diagnosis or treatment of a medically related condition.
3. The employee wishes to attend to the needs of the employee's eligible family members who are ill or to assist them in obtaining other services related to their health or well-being.
 - a. Sick leave used for these purposes may not exceed eighty hours per calendar year.
 - b. ~~Upon the approval of the agency appointing authority or designee, the~~The employee may, per calendar year, take up to an additional ~~ten percent~~four hundred eighty hours of the employee's accrued sick leave to care for the employee's child, spouse, or parent with a serious health condition. The employer may require the employee to provide written verification of the serious health condition by a health care provider.
4. During the first six months following the birth or placement of a child, an employee may use up to six weeks of the employee's accrued sick leave for the employee's newborn child or to care for a child placed with the employee for adoption or placed with the employee as a precondition to adoption. This does not prevent an employee from using sick leave for the employee's illness, medical needs, or health needs following the birth of a child or from using leave under North Dakota Century Code section 54-52.4-03.
5. The employee is seeking services or assisting the employee's spouse, parent, child, or sibling in obtaining services, relating to domestic violence, a sex offense, stalking, or terrorizing. At the discretion of the employee's supervisor, the sick leave hours used for this purpose may be limited to forty hours per calendar year.
6. It is appropriate as a participant in an employee assistance program.

History: Effective September 1, 1992; amended effective January 1, 2012; January 1, 2017.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1), 54-52.4-03

TITLE 17
CHIROPRACTIC EXAMINERS, BOARD OF

JANUARY 2017

CHAPTER 17-01-01

17-01-01-01. Organization and functions of the board of chiropractic examiners.

1. **History.** The board of chiropractic examiners was first established in 1915 under laws now codified as North Dakota Century Code chapter 43-06. North Dakota was the first state in the United States to issue a license to practice chiropractic.
2. **Functions.** One function of the board is to examine, or designate a testing agency to examine, candidates coming into the state to see if they are qualified to practice chiropractic in North Dakota. It is also the function of the board to prevent those who are unqualified from practicing chiropractic in the state.
3. **Board membership.** The board consists of five members appointed by the governor. Each member is a doctor of chiropractic. Members of the board serve five-year terms, and one term expires each year. Board members annually elect from board membership the president, vice president, and secretary-treasurer of the board.
4. **Secretary-treasurer.** The secretary-treasurer of the board is elected by the board and is responsible for overseeing the board's activities as stated in section 17-01-03-02.
5. **Executive director.** The board may hire an executive director to oversee the ~~clerical~~ needs administrative duties of the board, and who will answer to the board president.
6. **Inquiries.** Any questions or suggestions concerning these rules should be sent to the executive director.

History: Amended effective December 1, 1981; March 1, 1986; April 1, 1988; July 1, 1990; April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017.

General Authority: NDCC 43-06-04.1

Law Implemented: NDCC 28-32-02.1, 43-06-04, 43-06-04.1

CHAPTER 17-01-02

17-01-02-03. Board expenses.

Each member of the board of chiropractic examiners shall be reimbursed for the member's expenses for each day the member is actually engaged in performing the duties of the member's office as provided for in North Dakota Century Code section 44-08-04, and such mileage and travel expenses as are provided for in North Dakota Century Code section 54-06-09 and additional allowance for other necessary expenses incurred. Each member of the board shall receive compensation in the amount of two hundred and fifty dollars for each day or portion thereof spent in the discharge of the member's duties.

History: Effective April 1, 1982; amended effective April 1, 1984; February 1, 1990; April 1, 2001; July 1, 2008; January 1, 2017.

General Authority: NDCC 28-32-02, 43-06-05

Law Implemented: NDCC 43-06-05, 44-08-04, 54-06-09

**CHAPTER 17-02-01
ADMISSION TO PRACTICE CHIROPRACTIC**

Section

17-02-01-01	Educational Requirements [Repealed]
17-02-01-01.1	Approved Schools [Repealed]
17-02-01-01.2	Definitions
17-02-01-02	Applications for Licensure
17-02-01-02.1	Reciprocity
17-02-01-03	Fee for Examination [Repealed]
17-02-01-04	Photo
17-02-01-05	Examination Number [Repealed]
17-02-01-06	Examination Requirements [Repealed]
17-02-01-07	Conduct of Examination [Repealed]
17-02-01-08	Examination Subjects and Requirements
17-02-01-09	Declaration [Repealed]
17-02-01-10	License Issued
17-02-01-10.1	License Displayed
17-02-01-11	Second Examination [Repealed]
17-02-01-12	Licenses Recorded [Repealed]
17-02-01-13	License Renewal and Fees
17-02-01-14	License Renewal - Special Purposes Examination for Chiropractic [Repealed]
17-02-01-15	Lapsed Licenses
<u>17-02-01-16</u>	<u>Reactivation of an Inactive License</u>

17-02-01-01.2. Definitions.

1. Unless specifically stated otherwise, all definitions found in North Dakota Century Code section 43-06-01 are applicable to this title.
2. "Actual consultation" as used in North Dakota Century Code section 43-06-02 means seeking or giving professional advice, opinions, or assistance in conjunction with a licensed chiropractor in this state with regard to a specific patient for the purpose of providing chiropractic treatment to the patient.
3. In this title, unless the context or subject matter otherwise requires:
 - a. "National board" means the national board of chiropractic examiners or its successor or equivalent as determined by the board.
 - b. "Special purposes examination for chiropractic" or "SPEC" means the special purposes examination for chiropractic offered by the national board.
 - c. "Ethics and boundaries examination" or "E&B" means the ethics and boundaries examination offered by the Ethics and Boundaries Assessment Services, LLC (EBAS).

History: Effective May 1, 1993; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-02, 43-06-10, 43-06-10.1

17-02-01-02. Application for licensure.

Application shall be made on the official form issued by the board. The forms may be secured upon application to the executive director. Additionally, the applicant must complete the jurisprudence requirement under subsection 5 of section 17-02-01-02.1.

History: Amended effective February 1, 1990; April 1, 2001; [January 1, 2017](#).

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-08

17-02-01-08. Examination subjects and requirements.

Examinations will be provided by the national board, or its successor, except for jurisprudence, which will be administered by the board. An applicant must satisfy the following criteria:

1. The applicant must hold a diploma from a chiropractic college fully accredited by the council on chiropractic education [or its successor](#) or equivalent [as determined by the board](#).
2. If the applicant graduated before 1966, the applicant must have been in active practice and have passed five examinations (x-ray, orthopedics, jurisprudence, nutrition, and neurology) and also five practicals (x-ray, spinal biomechanics, extremity adjusting, first aid, and case management).
3. If the applicant graduated between 1966 and 1988, the applicant must have passed parts I and II of the national board examination. In addition, the applicant must have passed part IV or the SPEC.
4. If the applicant graduated between July 1988 and January 1997, the applicant must have passed parts I, II, and III of the national board examination. In addition, the applicant must have passed part IV or the SPEC.
5. If the applicant graduated after January 1997, the applicant must have passed parts I, II, III, and IV of the national board examination.
6. Passing grades for part IV of the national board examination are effective for seven years after which time the applicant may be required to take and pass the SPEC.
7. Graduates after January 1, 2001, must reflect a passing score on the national board's physiotherapy examination.

History: Amended effective February 1, 1990; April 1, 2001; July 1, 2008; January 1, 2016; [January 1, 2017](#).

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-10, 43-06-10.1

[17-02-01-16. Reactivation of an inactive license.](#)

[An applicant for reactivation of an inactive license will be considered if the following conditions are met:](#)

- [1. The applicant must provide a letter from all states in which that chiropractor has practiced since their North Dakota license became inactive indicating that they are in good standing to practice chiropractic in that other state or states.](#)
- [2. The applicant must appear before the board if the applicant cannot show proof of active practice in some state or jurisdiction for at least six months of the last three years.](#)
- [3. The applicant must take and pass the special purposes examination for chiropractic test if it has been three or more years since the chiropractor was in active practice in any state. The board may select to have any holder of an inactive license applying for reactivation take the special purposes examination for chiropractic test or any other evaluation at its discretion.](#)
- [4. The applicant must have successfully passed the jurisprudence examination in the past twelve months.](#)

5. The applicant agrees to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by North Dakota Century Code section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant.

History: Effective January 1, 2017.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-08

Law Implemented: NDCC 43-06-11.1, 43-06-13

CHAPTER 17-02-03

17-02-03-01. Filing addresses.

Every chiropractor shall file with the executive director of the board of examiners a valid email address and the chiropractor's mailing address in the city and location of the place where the chiropractor conducts practice and shall report the name of any other city and place wherein the chiropractor maintains a branch office for the purpose of practice.

History: Amended effective April 1, 2001; January 1, 2017.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-13

CHAPTER 17-02-04 AUTHORITY OF CHIROPRACTORS

Section

17-02-04-01	Rights and Privileges
17-02-04-02	Signing Death Certificates
17-02-04-03	Advertising
17-02-04-04	Definition of Practice of Chiropractic [Repealed]
17-02-04-05	School Certifications [Repealed]
17-02-04-06	Needle Acupuncture
<u>17-02-04-07</u>	<u>Dry Needling</u>

17-02-04-06. Needle acupuncture.

1. "Needle acupuncture" means a system of diagnosis and treatment for the purpose of restoring the body back to health which includes the utilization of needles which may be manipulated or stimulated by hand as well as by electric, magnetic, light, heat, or ultrasound. "Needle acupuncture" does not include electric point stimulation, the use of pressure adjunctive techniques for muscle, ligamentous, or neurologic stimulation or inhibition, or the drawing of blood for the purpose of clinical diagnostic laboratory evaluation.
2. A chiropractor may only practice needle acupuncture if the chiropractor is certified to practice needle acupuncture by the board.
3. A minimum of one hundred hours of training in needle acupuncture sponsored by a council of chiropractic education accredited college of chiropractic is required before a chiropractor may be certified to practice needle acupuncture.
4. The one hundred hours of training in acupuncture must be certified by the sponsoring college and registered by the sponsoring college with the executive director of the board.
5. When the required hours of training are registered by the sponsoring college, the board will issue the chiropractor a letter certifying that the chiropractor is authorized to practice needle acupuncture.
6. Any person who is authorized by the board to practice needle acupuncture shall complete, as a part of the licensed chiropractors' annual requirement, two hours of continuing education in acupuncture or acupuncture-related subjects.
7. If a licenseholder fails to complete the continuing education requirement in subsection 6, the licenseholder shall pay an administrative fee of one hundred dollars and provide proof of required continuing education hours in order to reinstate their ability to perform needle acupuncture.
8. If a licenseholder fails to complete the continuing education requirement in subsection 6 for more than one year, but less than three years, the licenseholder shall pay the administrative fee of one hundred dollars, plus provide proof of completion of an approved twelve-hour recertification seminar.
9. If a licenseholder fails to complete the continuing education requirement in subsection 6 for three or more years, the licenseholder must successfully pass the national board of chiropractic examiners acupuncture examination, or equivalent.

History: Effective May 1, 1993; amended effective April 1, 2001; January 1, 2017.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-04.1

17-02-04-07. Dry needling.

1. Dry needling is a method of treatment and rehabilitation for neuromusculoskeletal conditions. Dry needling is based on western medical concepts, including the art of examination, diagnosis, and case management.
2. A chiropractor may only practice dry needling if the chiropractor is certified by the board.
3. A minimum of fifty hours of face-to-face course study, which must include dry needling safety, is required before a chiropractor may be fully certified to practice dry needling. Online study is not considered appropriate training.
4. A temporary limited-scope certification is available for approved courses that divide the minimum training into successive independent modules. The board must be provided verification of completion prior to the temporary limited-scope certification being issued. The temporary limited-scope certification expires after eighteen months.
5. The face-to-face course of study must be sponsored by an institution accredited by the council of chiropractic or its equivalent or another course of study deemed appropriate by the board.
6. When the verification of required hours of training is provided to the board, the board shall issue the chiropractor a letter confirming that the chiropractor is authorized to practice dry needling.

History: Effective January 1, 2017.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-04.1

CHAPTER 17-03-01

17-03-01-01. Unprofessional conduct.

The board may revoke, suspend, or deny a license to any person otherwise qualified or licensed by the board who is found to have committed unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

1. Exploitation of patients for financial gain, which includes:
 - a. Overutilization of chiropractic services. Overutilization is defined as services rendered or goods or appliances sold by a chiropractor to a patient for the financial gain of the chiropractor or a third party which are excessive in quality or quantity to the justified needs of the patient.
 - b. Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
 - c. Exercising undue influence on a patient or client, including the promotion or the sale of services, goods, or appliances in such a manner as to exploit the patient or client.
 - d. The administration of treatment or the use of diagnostic procedures which are excessive as determined by the customary practices and standards of the local community of licensees.
2. Willfully harassing, abusing, or intimidating a patient, either physically or verbally.
3. Failing to maintain the chiropractic standard of care for a patient record and a billing record for each patient which accurately reflects the evaluation or treatment, or both, of the patient and the fees charged to the patient. Unless otherwise provided, all patient records must be retained for at least ten years.
4. The willful or grossly negligent failure to comply with the substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
5. Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public including habitual alcohol abuse, illegal use of controlled substances, or conducting unauthorized experiments or tests upon patients.
6. Conviction of a crime which is substantially related to the qualifications, functions, or duties of a chiropractor.
7. Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
8. Violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
9. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as a licenseholder or otherwise.
10. Knowingly making or signing any false certificate or other document relating to the practice of chiropractic care which falsely represents the existence or nonexistence of a state of facts.
11. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate any provision of the law or the rules adopted by the board.

12. Making or giving any false statement or information in connection with the application for issuance of a license.
13. Participation in any act of fraud or misrepresentation.
14. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
15. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.
16. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate supervision professional services which a licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
17. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, by experience, or by licensure, to perform them.
18. Advertising or soliciting for patronage that is not in the public interest, which includes:
 - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
 - b. Advertising or soliciting which guarantees any service or result.
 - c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
 - d. Advertising or soliciting which make claims of professional superiority which cannot be substantiated by the licensee.
 - e. Advertising or soliciting which is based upon a claim that the chiropractor uses a secret or special method of treatment and the chiropractor refuses to divulge the secret or special method of treatment to the board.
 - f. Advertising no out-of-pocket expenses or practicing same.
 - g. Advertising free examination or service.
 - h. Advertising that offers free items to induce patients to receive care.
19. Violation of any term of suspension or probation imposed by the board.
20. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient, even if the patient attempts to sexualize the relationship, except when the patient is the chiropractor's spouse.

History: Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017.

General Authority: NDCC 43-06-04.1, 43-06-15

Law Implemented: NDCC 43-06-15

TITLE 32
COSMETOLOGY, BOARD OF

JANUARY 2017

CHAPTER 32-01-02

32-01-02-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Clean" means the removal of visible debris and washing with soap and detergent and water. To clean means to make a nonporous item ready for disinfection.
2. "Contact time" means the amount of moist contact time required for the disinfectant to be effective against the pathogens on the label.
3. "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of cosmetology pursuant to North Dakota Century Code chapter 43-11.
- ~~2.4.~~ "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
- ~~3.5.~~ "Disinfect" means ~~to destroy harmful micro-organisms or to free from infection~~the process of making a nonporous item safe for use. To disinfect requires the use of a chemical intended to kill or denature a pathogen. An ultraviolet light is not an acceptable form of disinfection.
- ~~4.6.~~ "Disinfectant" means ~~an agent used to kill germs~~federal environmental protection agency registered bactericidal, virucidal, and fungicidal chemical or agent used to destroy pathogenic micro-organisms.
- ~~5.7.~~ "Good repair" means that an item is soil-free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
- ~~6.8.~~ "Infectious disease" means any disease which can be transmitted, directly or indirectly, from person to person.
9. "Nonporous" means any material that has no pores and does not allow for liquids to be absorbed or passed through, such as metal, glass, and plastic.
- ~~7.10.~~ "Occupation of cosmetologist" includes the practice of esthetics and manicuring as defined in North Dakota Century Code section 43-11-01.
11. "Porous" means any material that allows for liquids to be absorbed or passed through. This includes all nail files and emery boards that are not made entirely of metal or glass, pumice stones, buffing blocks, orange wood sticks, cotton, toe separators, and flip-flops.

~~8-12~~ "Salon" means a location where the occupation of a cosmetologist, manicurist, or esthetician is practiced. The occupation of a cosmetologist, manicurist, or esthetician is practiced in a location if the cosmetologist, manicurist, or esthetician provides services at the location on a regularly scheduled basis. The occupation of a cosmetologist, manicurist, or esthetician is not practiced in a location if the services are provided at special or educational events after notification to and approval by the board, or under a homebound license.

~~9. "Sanitized" means rendered free of dust, foreign material, and agents of disease or infestation through use of effective cleaning and disinfecting processes.~~

~~10. "Sanitizer" means a container holding a sanitizing agent which is large and deep enough to completely submerge the tools and implements to be disinfected.~~

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005; [January 1, 2017](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-27.1

CHAPTER 32-01-03

32-01-03-01. Comply with laws.

All cosmetology salons and schools and all cosmetologists, ~~manager-operators~~, estheticians, manicurists, instructors, student instructors, and students shall comply with the rules contained in this title and all applicable federal, state, and local laws, ordinances, rules, regulations, and codes.

History: Amended effective July 1, 1990; December 1, 2005; January 1, 2012; [January 1, 2017](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-11.1, 43-11-12, 43-11-13, 43-11-14, 43-11-15, 43-11-16, 43-11-17, 43-11-18, 43-11-19, 43-11-20, 43-11-20.1, 43-11-20.2, 43-11-20.3, 43-11-20.4, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-27.1, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-33, 43-11-34, 43-11-35

32-01-03-04. Board to determine qualifications of applicant.

The sufficiency of the qualifications of all applicants for admission to board examinations of all students and student instructors or for registration or licensing of students, student instructors, instructors, cosmetologists, ~~manager-operators~~, estheticians, and manicurists shall be determined by the board. The board may delegate such authority to the secretary of the board, and anyone feeling aggrieved by the board secretary's decision may in writing request a hearing before the board on the matter. The board hearing shall be conducted pursuant to the provisions of North Dakota Century Code chapters 43-11 and 28-32.

History: Amended effective July 1, 1990; December 1, 2005; January 1, 2012; [January 1, 2017](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19, 43-11-21, 43-11-22, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-35

ARTICLE 32-02
SANITATION CLEANING AND DISINFECTING

Chapter
32-02-01 Rules of ~~Sanitation~~Cleaning and Disinfecting

CHAPTER 32-02-01
RULES OF SANITATION CLEANING AND DISINFECTING

Section
32-02-01-01 Rules Posted
32-02-01-02 Space Dimensions and Requirements
32-02-01-03 Lighting - Exhaust Fan - Fire Extinguishers
32-02-01-04 ~~Sanitary~~Cleaning and Disinfecting Premises
32-02-01-05 Water Supply and Waste Disposal
32-02-01-06 Personal Hygiene
32-02-01-07 First Aid Kit
32-02-01-08 ~~Sanitary~~Cleaning and Disinfecting Articles
32-02-01-09 Laundry and Storage of Cloth Items
32-02-01-10 Method of Disinfection
32-02-01-11 Particular Aspects of Disinfecting
32-02-01-12 Toilet Facilities
32-02-01-13 Pets
32-02-01-14 Infants and Children
32-02-01-15 Inspections

32-02-01-01. Rules posted.

The owner or manager of every ~~cosmetology~~licensed salon and school shall keep a copy of the rules of ~~sanitation~~cleaning and disinfecting posted in a conspicuous place in each salon and school for the information and guidance of all persons employed or studying therein.

History: Amended effective March 1, 1998; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-02. Space dimensions and requirements.

1. ~~Cosmetology~~Salon. To maintain adequate conditions of ~~sanitation~~cleanliness and disinfection and in the interest of the public health and welfare, each ~~cosmetology~~salon shall have adequate workspace to maintain a safe ~~and sanitary~~ condition for a ~~cosmetology~~salon. In addition to such workspace, the ~~cosmetology~~salon shall have a reception area, supply room or supply area with enclosed cabinets, toilet facilities, and facilities to maintain ~~sanitary~~clean conditions. There shall be adequate workspace for each additional cosmetologist, manicurist, or ~~manager-operator~~esthetician in the salon.
 - a. Separate entrance. All public entrances and exits must meet the local or state building codes.
 - b. ~~Cosmetology~~Salon separate. A ~~cosmetology~~salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
 - c. Resident salons. Each ~~cosmetology~~salon in a residential building shall maintain an entrance separate from the entrance to living quarters. No cosmetology, manicuring, or esthetician services shall be conducted in any room used as living or sleeping quarters. A

~~cosmetology~~ salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a ~~cosmetology~~ salon shall be permanently set on a foundation. Each ~~cosmetology~~ salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters. No ~~cosmetology~~, manicuring, or esthetician services shall be conducted in any room used as living or sleeping quarters. A ~~cosmetology~~ salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

2. **Cosmetology schools.** To maintain adequate conditions of sanitation cleanliness and disinfection and in the interest of the public health and welfare, each cosmetology school shall have adequate square feet of floor space to maintain a safe ~~and sanitary~~ condition for a cosmetology school. Such floor space must include a business office, reception room, clinic laboratory practice room, dispensary, student lounge, hallways, and classrooms sufficient for training the number of students enrolled. Two lavatories must be in the same building as the school and immediately and easily accessible from the school. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled.
3. **Cosmetology school separate.** Each cosmetology school shall be separated from living quarters and any other business, except an affiliated school, by a solid nontransparent wall from floor to ceiling containing no openings or doors.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-03. Lighting - Exhaust fans - Fire extinguishers.

1. Each ~~cosmetology establishment~~ licensed salon shall have adequate lighting at all workstations.
2. Each ~~cosmetology establishment~~ licensed salon shall be equipped with an exhaust fan or air exchange system in the working area appropriate for the services provided.
3. A ~~cosmetology establishment~~ licensed salon shall have a fire extinguisher mounted in public view. All employees and students shall be instructed in the proper operation and use of the fire extinguisher.

All exhaust fans, fire extinguishers, and lighting must comply with the state and local building codes.

History: Amended effective July 1, 1988; March 1, 1998; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-04. Sanitary Cleaning and disinfecting premises.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floors must be cleaned and made free of hair and other debris after each client and must be in good repair. Carpeting is not permitted in the working area, except in ~~cosmetology establishments~~ a licensed salon with carpeting in the working area on July 1, 2000, and which

have not changed ownership since July 1, 2000. Carpeting will only be permitted in the reception, and drying,~~and facial treatment~~ areas.

3. Windows and mirrors should be clean.
4. Shampoo bowls~~and implements~~ must be free from all hair and debris and cleansed prior to each use and disinfected daily.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.
6. Pedicure chairs, foot spas, and manicure tables must be cleaned and disinfected between uses. Pedicure bowls must be emptied. Screens, filters, drains, and other removable parts must be removed and first cleaned with soap, detergent, and water, and then immersed in a federal environmental protection agency registered disinfectant, following the manufacturer's directions for proper contact time. The tub must be scrubbed with soap, detergent, and water, then rinsed and filled with water, adding in an environmental protection agency registered disinfectant to achieve proper concentration. The concentration should be allowed to sit or run through the jetted system as per the manufacturer's recommended contact time. The tub should then be drained and either allowed to air dry or wiped dry with a clean towel.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; January 1, 2002; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-05. Water supply and waste disposal.

Each ~~cosmetology establishment~~licensed salon shall be equipped with an adequate supply of hot and cold running water and proper plumbing located within the confines of the salon, separate from a bathroom facility. Each salon and school shall:

1. Have a safe water supply, approved by the local health authority or the state department of health.
2. Dispose of sewage and other liquid wastes in a sanitary manner, approved by the local health authority or the state department of health.
3. Store and collect solid waste so as to avoid health hazards, rodent harborages, insect breeding areas, and accidents.
4. Have solid wastes collected at least once each week, and an adequate number of approved covered containers shall be provided for storage of solid waste pending collection.

All plumbing in every ~~cosmetology establishment~~salon shall comply with the state and local plumbing code.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-06. Personal hygiene.

Every cosmetologist, ~~manager-operator,~~ manicurist, esthetician, instructor, and student, while on the ~~cosmetology establishment~~salon premises, shall be neat and clean in person and in attire, and free from any infectious or communicable disease.

1. **Attire.** Every cosmetologist, ~~manager-operator~~, manicurist, esthetician, instructor, student instructor, and student must be neat and clean in person and attire, and shall wear clean washable professional attire as determined by salon and school owner.
2. **Hands.** Every cosmetologist, ~~manager-operator~~, manicurist, esthetician, instructor, student instructor, and student shall wash one's hands with soap and water immediately before serving each client. Hand sanitizer must be available for customers and manicurists to use.
3. **Carrying combs.** Combs or other instruments shall not be carried in clothing pockets or other leather or cloth pouches, holsters, or other porous containers or cases.
4. **Infectious or communicable diseases.** A cosmetologist, ~~manager-operator~~, manicurist, esthetician, instructor, student instructor, or student who has an infectious or communicable disease may not knowingly transmit the disease to the public in a ~~cosmetology establishment~~ salon while such a disease is in a communicable stage.
5. **Smoking.** A cosmetologist, ~~manager-operator~~, manicurist, esthetician, instructor, student instructor, or student may not smoke while actively engaged in serving the public.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-07. First-aid kit.

Every ~~cosmetology establishment~~ licensed salon shall have and maintain a complete first-aid kit in a readily accessible location on the premises. At a minimum, the first-aid kit must include adhesive dressings, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

History: Amended effective July 1, 2000; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-08. Sanitary Cleaning and disinfecting articles.

All tools, instruments, shampoo bowls, and other articles which come in contact with a client shall be washed cleaned and disinfected before use on each client. Each ~~cosmetology establishment~~ licensed salon shall have ~~at least one wet sanitizer ready for use at all times containing a disinfectant solution~~ available for use at all times a federal environmental protection agency registered disinfectant and a container available that will be used to disinfect tools. The ~~use~~ reuse of any porous instrument which cannot be ~~rendered sanitary~~ disinfected is prohibited.

History: Amended effective July 1, 1988; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-09. Laundry and storage of cloth items.

1. **Clean cloth and linen items.** All clean cloth and linen towels, robes, and similar items shall be kept in an enclosed, dustproof cabinet in ~~cosmetology establishments~~ the salon until used.
2. **Soiled cloth items and laundering.** ~~Each towel, robe~~ All towels, robes, sheets, capes, and similar linen ~~article~~ items may be used only once and then must be properly laundered. After use, and until laundering, each item must be placed in an enclosed container. All soiled towels and linens must be laundered in a washing machine with laundry detergent in hot water. Commercial laundering is acceptable.

History: Amended effective July 1, 1988; March 1, 1998; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-10. Method of disinfection.

The disinfection process shall consist of three steps, and the elimination of any one of the steps render the process ineffective. The three steps to be followed are:

1. **Cleaning.** ~~Clean hair out of combs, brushes,~~ Remove debris from tools, and instruments and wash them thoroughly with hot water and a synthetic detergent in order to remove all traces of soil. ~~Contact points of nonimmersible (electrical) equipment such as clippers must be wiped or sprayed with an environmental protection agency registered, hospital grade, tuberculocidal disinfectant created specifically for electrical equipment.~~
2. **Rinse.** Thoroughly rinse in clear water to remove all traces of detergent from the ~~combs, brushes,~~ tools, and instruments.
3. **Immersion.** Completely immerse ~~combs and brushes~~ all implements that are nonporous, such as those made of glass, metal, or plastic, in an appropriate ~~utensil~~ container, large enough to cover all items, including all handles, with an effective ~~germicidal solution~~ federal environmental protection agency registered bactericidal, virucidal, and fungicidal disinfectant prepared and used in accordance with directions on the label, ~~after which the combs, brushes, tools, and instruments shall be.~~ After the manufacturer's required contact time listed on the label has been met, items must be removed, air dried, and stored in a clean, covered, and dustproof cabinet in the ~~cosmetology establishments~~ salon until used.

Shears and razors are not required to be washed, but must be wiped to remove hair, product residue, and skin debris, and then disinfected with an environmental protection agency registered disinfectant spray or wipe after each use. The surface must remain wet with the spray or wipe disinfectant for the contact time listed on the disinfectant label.

Nonimmersible electrical equipment must be wiped or sprayed with an environmental protection agency registered disinfectant that is bactericidal, virucidal, and fungicidal, and created specifically for electrical equipment. Contact time for the electrical equipment as listed on the manufacturer's label must be observed.

History: Amended effective March 1, 1998; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-11. Particular aspects of disinfecting.

1. **Germicides.** In disinfecting tools, instruments, and implements, any ~~federally approved germicide prepared specifically for germicidal~~ federal environmental protection agency registered bactericidal, virucidal, and fungicidal disinfectant treatment of tools, instruments, and implements shall be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean, and free from contaminants.
2. **Fluids, creams, waxes, and powders.** All fluids, semifluids, creams, ~~wax~~ waxes, and powders shall be kept in a clean, covered container free of contaminants at all times and shall be dispensed with a clean ~~sanitized~~ spatula or from a shaker, dispenser pump, or spray-type container. ~~Spatulas~~ Single-use spatulas made of a ~~washable, nonabsorbent material may be sanitized and used again, and spatulas made of wood shall be discarded after use~~ porous material, such as wood, must be discarded after a single use or application. Nonporous spatulas, such as those made of plastic or metal, can only be used for a single use or application and must be cleaned and disinfected before being used again. Fluids, semifluids,

creams, and powders shall be applied only by ~~sanitary~~, disposable applicators, and the applicators shall be discarded after use. Gloves must be worn when performing waxing or tweezing services. Roll on wax is prohibited.

3. **Tools and instruments.** All permanent wave equipment, clips, rollers, pins, ~~shampoo and comb-out capes, nets,~~ as well as all other tools, instruments, and implements shall be kept in a clean, sanitized and disinfected condition at all times. ~~Neck strips or similar covering shall be used in lieu of a clean towel whenever applicable in order to prevent such materials from coming in contact with the skin or hair of each client. Such neck strips or similar covering shall not be used more than once, and all~~All other reusable items shall be ~~washed, sanitized,~~cleaned and disinfected before use on each client.
4. **Containers.** The manufacturer's label must be on all original containers for any chemicals used in the salon. All bottles and containers shall be correctly and distinctly labeled to disclose their contents, and all bottles and containers containing poisonous substances shall be so designated.
5. **Waste container.** Each ~~cosmetology establishment~~licensed salon shall provide adequate covered and lined waste containers which shall be emptied ~~and washed daily. All chemical waste material must be deposited immediately in a closed fire-retardant container and frequently disposed of in a sanitary manner~~when full.
6. **Protective coverings.** All protective coverings used on a client shall be kept clean and in good condition. Protective coverings, or "capes", must always be used on clients receiving hair services and must be laundered in accordance with section 32-02-01-09 after each use. Capes made of plastic or vinyl unable to be laundered in accordance with section 32-02-01-09 shall be disinfected with the use of an environmental protection agency registered disinfectant spray or wipe in accordance with the manufacturer's label.
7. **Wet ~~sanitizers~~disinfecting units.** Each ~~cosmetology establishment~~licensed salon shall have wet ~~sanitizers~~disinfecting units of sufficient size and quantity to ~~sanitize~~disinfect all tools, instruments, and implements of the establishment, and such ~~sanitizers~~disinfectants shall be readily accessible. Such ~~sanitizers~~disinfecting units shall contain ~~a commercial sanitizing agent approved federally~~an environmental protection agency registered disinfectant and such ~~sanitizing agent~~disinfectant shall be used according to the manufacturers' directions.
8. **Metal instruments.** All metal tools, instruments, and implements shall be ~~sanitized~~cleaned and disinfected with ~~a~~an environmental protection agency registered disinfectant solution after each use and stored in a closed container until the next use. All clippers and trimmers must be cleaned with ~~a~~an environmental protection agency registered disinfectant spray or wipe after each client.
9. **Storage of supplies.** Every ~~cosmetology establishment~~licensed salon shall have a separate cabinet or storage area for the storage of supplies, and any supplies containing any caustic or other material harmful to humans shall be stored in a place not readily accessible to clients or the public.
10. **Combs and brushes.** Combs and brushes shall be ~~cleansed~~cleaned and disinfected prior to each use. All shall be in good usable condition.
11. **Electric tools and outlets.** Each ~~cosmetology establishment~~licensed salon shall have a sufficient number of electrical outlets so that no cord or electrical connection constitutes a hazard, fire or otherwise, to the public or persons employed or learning in the establishment.
12. **Neck brushes.** No salon or school may use neck brushes.

13. **Dry sanitizer storage.** All tools, instruments, and implements must be stored in a clean closed cabinet or drawer. Paper, money, candy, and personal items may not be stored or placed in cabinets or drawers where tools, instruments, and implements are stored.
14. **Ultraviolet light.** Ultraviolet light boxes are prohibited as a means of disinfection.
15. **Banned products.** Any products or supplies banned by the United States drug enforcement administration or other federal, state, or local governing agency, including methyl-methacrylate, are prohibited.
16. **Invasive practices.** Skin cutting equipment, including razor type callus shavers, credo blades, rasps or graters, or other implements used to remove corns, calluses, moles, or otherwise used to cut below the skin surface, are prohibited. The use of lancets also is prohibited.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-12. Toilet facilities.

All ~~cosmetology~~ salons shall have adequate toilet facilities conveniently located and readily accessible to the public patronizing the establishment. All ~~cosmetology~~ salons in residential establishments shall provide and label toilet facilities only for the use of customers during business hours. Toilet facilities shall be clean, sanitary/disinfected, and properly maintained at all times. All plumbing must be in accordance with the state or local plumbing codes.

Each salon shall provide adequate handwashing facilities, including hot and cold running water. Each handwashing sink must have a soap dispenser supplied with liquid soap and disposable towels or approved air dryer.

History: Amended effective March 1, 1998; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-13. Pets.

No animals, birds, or other pets, except assistance animals for the disabled and fish in aquariums, shall be permitted in any ~~cosmetology establishment~~ licensed salon.

History: Amended effective December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-14. Infants and children.

No ~~cosmetology establishment~~ licensed salon premises shall be used in any manner for the care or babysitting of infants or small children.

History: Amended effective January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-15. Inspections.

~~Certificates of registration for cosmetology establishments~~ A salon license shall only be issued to establishments inspected and approved by the board. A board inspection and approval shall be required for all new salons and schools as well as when changes of ownership or address take place.

All salon premises must be open for inspection during normal business hours. If a salon is not open every day, the salon owner must inform the board office of the days the salon is open for business.

History: Amended effective July 1, 1988; [January 1, 2017](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13, 43-11-17

**ARTICLE 32-03
SALONS**

Chapter
32-03-01 ~~Cosmetology~~ Salons

**CHAPTER 32-03-01
~~GOSMETOLOGY~~ SALONS**

Section
32-03-01-01 Salon Applications
32-03-01-02 Floor Plan
32-03-01-03 Zoning [Repealed]
32-03-01-03.1 Salon Transfer
32-03-01-04 ~~Certificates~~License Displayed
32-03-01-05 Separate Establishments
32-03-01-06 Changes in Operators or Manager-Operators [Repealed]
32-03-01-07 ~~Manager-Operator~~Master Cosmetologist
32-03-01-08 Tools and Supplies
32-03-01-09 Signs
32-03-01-10 Booth Space
32-03-01-11 Salon Discontinuance
32-03-01-12 Application for License to Practice Cosmetology for the Homebound
32-03-01-13 Brush Rollers
32-03-01-14 Practice Outside of Salon

32-03-01-01. Salon applications.

All persons, firms, associations, corporations, partnerships, and other entities desiring to operate a ~~cosmetology~~-salon shall make application to the board for a ~~certificate of registration~~license prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of eighty dollars. All renewal applications of ~~cosmetology~~-salons shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of thirty dollars. Prior to any change of ownership, name, location, or address, a ~~cosmetology~~ salon shall apply for ~~reregistration~~a new license with the board. For rural salons, owners shall supply a detailed map indicating the salon's exact location and directions for driving to that salon.

History: Amended effective July 1, 1988; January 1, 2002; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-17, 43-11-28

32-03-01-04. ~~Certificates~~License displayed.

Every ~~cosmetology~~-salon shall conspicuously display its ~~certificate of registration~~license in the reception area of the salon.

History: Amended effective January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-14

32-03-01-05. Separate establishments.

~~Cosmetology salons~~Salons shall be located separately from cosmetology schools.

History: Amended effective January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-03-01-07. ~~Manager-operator~~Master cosmetologist.

Every ~~cosmetology~~salon shall have a ~~manager-operator~~master cosmetologist who shall be responsible for the operation, conduct, and management of the salon. A salon only providing manicuring services must have a master cosmetologist or master manicurist who is responsible for the operation, conduct, and management of the salon. A salon providing only skin care shall have a master cosmetologist or master esthetician who is responsible for the operation, conduct, and management of the salon. The ~~manager-operator~~master cosmetologist, master manicurist, or master esthetician shall be present on the salon premises during business hours, except the ~~manager-operator~~individual may take breaks or leave to perform other responsibilities for periods of time that do not exceed one hour and the ~~manager-operator~~individual need not be present if ~~cosmetology~~services are not being performed. Each salon owner or ~~manager-operator~~master cosmetologist, master manicurist, or master esthetician shall provide the office with an accurate schedule of the days and hours the salon is open for business.

History: Amended effective July 1, 1988; March 1, 1998; July 1, 2000; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-15

32-03-01-08. Tools and supplies.

Each ~~cosmetology~~salon shall maintain tools, supplies, instruments, capes, and equipment adequate for the number of cosmetologists ~~and manager-operators,~~ manicurists, and estheticians employed and adequate to serve the public in cosmetology.

History: Amended effective January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-03-01-09. Signs.

Every ~~cosmetology~~salon shall display and maintain a sign that is clearly visible to anyone approaching the entrance to the salon. The sign shall designate the establishment as a ~~cosmetology establishment~~salon and give the name of the salon.

History: Amended effective July 1, 1988; March 1, 1998; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13

32-03-01-10. Booth space.

In the event any salon premises are divided into booth space allotments to be leased to others, each person, firm, association, partnership, corporation, or other entity whose name appears on the application as operator of the booth space shall be responsible for the ~~sanitary conditions of~~properly cleaning and disinfecting the space. Booth rental salons are subject to inspections during the operation whether or not a booth operator is available. The owner of the ~~cosmetology~~salon shall be responsible for keeping the entire salon open for inspection by the board or board inspectors, and the board shall examine and inspect the entire salon premises regardless of any booth space allotments.

Each booth space allotment shall be licensed as a separate salon ~~having a separate and independent certificate of registration,~~ and each booth space allotment shall be operated only by a ~~manager-operator~~master cosmetologist, master manicurist, or master esthetician.

1. **Compliance as salon.** Each booth space allotment must have adequate workspace. The salon premises must meet all of the requirements of a salon contained in North Dakota

Century Code chapter 43-11 and this article, except that there may be common reception areas, common toilet facilities, common product dispensing area, and common entrances and exits.

2. **Certificates License displayed.** The ~~certificate of registration~~ license for each booth space allotment shall be displayed in the booth.
3. **Premises used.** Each ~~manager-operator~~ master cosmetologist, master manicurist, or master esthetician operating a booth space salon shall be responsible for all professional services performed and for all of the premises used.

History: Amended effective February 1, 1996; March 1, 1998; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13, 43-11-15, 43-11-17

32-03-01-11. Salon discontinuance.

Each ~~cosmetology~~ salon intending to discontinue its operation shall notify the office in writing prior to the final date of operation.

History: Amended effective July 1, 1988; March 1, 1998; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15

32-03-01-12. Application for license to practice cosmetology for the homebound.

All licensed cosmetologists not associated with licensed salons desiring to provide cosmetology services for the homebound shall make application to the board for a homebound license and meet the following requirements:

1. Possess a valid ~~manager-operator~~ master cosmetologist, master manicurist, or master esthetician license.
2. Possess a kit and present the kit for inspection by a board-approved inspector. The kit must contain the following:
 - a. License;
 - b. Copy of rules of ~~sanitation~~ cleaning and disinfecting;
 - c. First-aid kit complying with section 32-02-01-07; and
 - d. Separate closed labeled containers for soiled and clean supplies.
3. Comply with all rules of disinfection for combs, brushes, tools, and other equipment as provided in section 32-02-01-10.
4. The original fee for a homebound license is fifty-five dollars per year and annual renewals are thirty dollars per year and yearly inspections must be coordinated with the inspector.

History: Effective February 1, 1996; amended effective July 1, 1996; August 8, 1996; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-13, 43-11-13.2, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-28

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 32-03-01-12 AS ADOPTED BY THE STATE BOARD OF COSMETOLOGY EFFECTIVE FEBRUARY 1, 1996.

The committee objects to this rule because the committee deems it to be unreasonable, arbitrary, or capricious. The committee believes this rule exceeds the intent of the Legislative Assembly by unduly restricting the availability of cosmetology services to homebound persons.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective May 29, 1996.

General Authority: NDCC 28-32-03.3

32-03-01-13. Brush rollers.

All brush rollers must be free of hair before ~~sanitizing~~being disinfected.

History: Effective March 1, 1998; amended effective January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-11.1

32-03-01-14. Practice outside of salon.

A ~~manager-operator~~master cosmetologist, master manicurist, or master esthetician may practice outside of a salon establishment if:

1. The ~~manager-operator~~master cosmetologist, master manicurist, or master esthetician has one year of work experience;
2. The ~~manager-operator~~master cosmetologist, master manicurist, or master esthetician follows all applicable rules of ~~sanitation~~cleaning and disinfecting adopted in chapter 32-02-01; and
3. Cosmetology services are not provided in a manner or frequency to cause the location where the services are provided to constitute a salon as defined in section 32-01-02-01.

History: Effective July 1, 2000; amended effective December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05, 43-11-11

Law Implemented: NDCC 43-11-11

CHAPTER 32-04-01

32-04-01-07. Student transfers.

1. **Domestic transfers.** A student of a North Dakota cosmetology school transferring to another school shall be granted full credit for the hours completed.
2. **Foreign transfer.** Any student of a cosmetology school located in another state, country, or territory desiring to transfer to a North Dakota school shall make an application to the board in the same manner as a new student. A certified copy of the student's records shall accompany the application. Approval of the board must be given in writing before any transfer is made. If the board approves the application and the student completed the course, the student shall receive full credit hours for the course. If the board approves the application and the student did not complete the course, the student shall be granted ~~two-thirds~~full credit ~~hour~~ for the hours completed.
3. **Credit hours.**
 - a. North Dakota school credit hours will be credited for five years.
 - b. Out-of-state credit hours will be credited for two years.

History: Amended effective July 1, 1988; July 1, 2000; [January 1, 2017](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19

32-04-01-13. Equipment and library.

Each cosmetology school shall have the following minimum equipment and library for each of the following courses of training and instruction provided by the school:

1. **Cosmetology minimum equipment:**

- 1- Chart of anatomy
 - a. Bones
 - b. Muscles
 - c. Nerves
 - d. Circulatory system
 - e. Skin
- 1- Blackboard for each theory room
- 1- Large wet ~~sterilizer~~disinfecting unit for each twenty-five students enrolled
- 1- Shampoo basin for each six students enrolled
- 6- Facial chairs, beds, or tables
- 1- Hair dryer for each eight students enrolled
- 1- Manicure table for each four students enrolled
- 1- Workstation with mirror for each two students enrolled
- 300- Permanent cold wave rods and other permanent cold wave supplies
 - 1- Bulletin board - conspicuously located
 - Solution dispensers adequate for enrollment

Fireproof cabinet or file for school and student records

Adequate supply of facial supplies

2. Esthetician minimum equipment:

- a. Sufficient chalkboards.
- b. One lavatory bowl for enrollment for up to fifteen students.
- c. One workstation or position per two students, which must include a facial chair or cushioned massage table.
- d. One set of facial equipment per two workstations or positions, to include manual, mechanical, or electrical apparatus (at least one of the following): electrical heating mask, steamer, brushing, vacuum ionization, glass electrode or high-frequency galvanic or cathodic current (prohibited faradic) decrustation machine, spray or mister, or one magnification lamp.
- e. Sufficient trays for facial supplies.
- f. One dry **sterilizer storage unit** per each workstation.
- g. One properly lighted makeup area.
- h. One head form or chart per class.
- i. Audiovisual aids.

3. Manicurist minimum equipment:

- a. Sufficient chalkboards.
- b. A minimum of one handwashing sink separate from restrooms for enrollment up to fifteen, and one additional sink for each fifteen students or fraction thereof.
- c. Advanced department will have adequate chairs for clients, also adequate ventilation for work areas.
- d. One workspace with adequate light must be provided for every student.
- e. Sufficient trays for manicuring supplies.
- f. One set of mannequin hands per student.
- g. Manicuring kit for each student containing proper implements for manicuring and pedicuring.
- h. Implements for artificial nails, nail wraps, and tipping.
- i. One pedicure setup station.
- j. Audiovisual aids.

4. Minimum school library:

- a. Standard dictionary.
- b. Dictionary of medical words.

- c. Standard textbook.
- d. References on iron curling.
- e. References on hair straightening.
- f. References on hair coloring.
- g. Copy of cosmetology law.
- h. Copy of sanitary cleaning and disinfecting rules and regulations.
- i. Copy of minimum prices.
- j. Trade magazines.
- k. Audiovisual aids pertaining to cosmetology.

History: Amended effective July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-04-01-25. Examinations.

1. **School examinations.** Each student must have successfully passed eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work.
2. **Board examinations.** A cosmetologist, manicurist, ~~and~~ esthetician, and instructor examination shall consist of a theoretical portion and a practical portion. The practical examinations shall be administered by the board.

In order to be certified as passing an examination, a candidate shall score at least seventy-five percent on the theoretical and practical portions of the examination.

3. **Failing applicant.** Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake ~~the portion of the examination they have failed.~~ An applicant for a cosmetology license who fails the practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology. An applicant for an esthetician license who fails the practical examination twice must complete an additional fifty hours of training at a school of cosmetology. An applicant for a manicurist license who fails the practical examination twice must complete an additional thirty hours of training at a school of cosmetology.
4. **Applicant complaint.** An applicant shall notify the board in writing if there is reason to believe that there has been discrimination during any portion of the examination.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22, 43-11-23

32-04-01-26.1. Cosmetology course curriculum.

The hours of the cosmetology course curriculum must include the following:

Hair shaping

250 hours

Hairstyling	250 hours
Nails	100 hours
Facials, skin care	100 hours
Chemical services	250 hours
Study of theory, law, and sanitation <u>cleaning and disinfecting</u>	400 hours
Related subjects (classroom or clinic for instructions)	450 hours
Total minimum hours	<u>1,800 hours</u>

History: Effective July 1, 2000; amended effective January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-27. Esthetician course curriculum.

The curriculum for students enrolled in an esthetician course must be six hundred hours of training. No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. The curriculum must include the following:

Sterilization, sanitation <u>Cleaning, disinfecting</u> , and safety	75 hours
Body treatment, facials, hair removal, and makeup	340 hours
Study of theory, law, and sanitation <u>cleaning and disinfecting</u>	75 hours
Related subjects	60 hours
Unassigned	50 hours
Total minimum hours	<u>600 hours</u>

History: Effective July 1, 1990; amended effective July 1, 2000; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-28. Manicurist course curriculum.

The curriculum for students enrolled in a manicurist course must be three hundred fifty hours. No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. The curriculum must include the following:

Sterilization, sanitation <u>Cleaning, disinfecting</u> , and safety	45 hours
Manicuring, pedicuring, and application of artificial nails	200 hours
Study of theory, law, and sanitation <u>cleaning and disinfecting</u>	45 hours
Related subjects	35 hours
Unassigned	25 hours
Total minimum hours	<u>350 hours</u>

History: Effective July 1, 1990; amended effective December 1, 2005; January 1, 2012; [January 1, 2017](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

**ARTICLE 32-05
INDIVIDUALS**

Chapter
32-05-01

~~Operators~~Cosmetologists, ~~Manager-Operators~~Master Cosmetologist, Instructors,
Student Instructors, Demonstrators, Estheticians, and Manicurists

**CHAPTER 32-05-01
COSMETOLOGISTS, ~~MANAGER-OPERATORS~~MASTER COSMETOLOGIST,
INSTRUCTORS, STUDENT INSTRUCTORS, DEMONSTRATORS, ESTHETICIANS, AND
MANICURISTS**

Section

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32-05-01-02 ~~Manager-Operators~~Master Cosmetologist
32-05-01-03 Instructors
32-05-01-04 Student Instructors
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32-05-01-06 Esthetician
32-05-01-06.1 Master Esthetician
32-05-01-07 Manicurist
32-05-01-07.1 Master Manicurist

32-05-01-01. Cosmetologists.

Every person desiring to be licensed by the board as a cosmetologist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to cosmetologists and the educational qualifications set forth in section 32-04-01-26.1 and shall make application to the board for a certificate prior to commencing any activity as a cosmetologist.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant, the original license fee of fifteen dollars, and the practical examination fee of twenty-five dollars.
2. **Renewal.** Every cosmetologist shall renew the cosmetologist's license by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the cosmetologist's license by the expiration date, a penalty fee of ~~fifteen~~fifty dollars is required.
4. **Change of name or address.** Every cosmetologist shall notify the board in writing of any change of name or change of residence address.
5. **~~Certificates~~License displayed.** Every cosmetologist shall conspicuously display the cosmetologist's ~~certificate of registration~~license in the reception or work area of the ~~cosmetology~~ salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

32-05-01-01.1. License without examination.

Every person desiring to be licensed as a cosmetologist, instructor, manicurist, or esthetician without taking the examination shall make an application on the form provided by the board and:

1. Pay the application fee.
2. Provide proof that the applicant is licensed as a cosmetologist, instructor, manicurist, or esthetician in another jurisdiction and that the applicant's license is in good standing.
3. Demonstrate ~~the~~that either:
 - a. The applicant provides satisfactory proof of completing the course curriculum hours required by the board and provide proof of successfully passing the theoretical and practical examinations substantially similar to those required in this state; or
 - b. The other jurisdiction's licensure requirements at the time the applicant was licensed by the other jurisdiction were substantially equal to those in North Dakota at the time the North Dakota application was filed. ~~Three~~Under this specific subsection, three thousand hours or more of work experience as a licensed cosmetologist will be considered substantially equal to three hundred hours of cosmetology education.
4. Pass an examination on North Dakota ~~sanitation practices and cosmetology law~~laws, rules, and regulations.

History: Effective July 1, 2000; amended effective December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-25

32-05-01-02. ~~Manager-operators~~Master cosmetologists.

Every person desiring to be licensed by the board as a ~~manager-operator~~master cosmetologist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to ~~manager-operators~~master cosmetologists and shall make written application to the board.

1. **Fee and proof.** The application shall be accompanied by the fee of twenty-five dollars and the required proof of qualification.
2. **Renewal.** Every ~~manager-operator~~master cosmetologist shall renew the ~~manager-operator's~~master cosmetologist's license by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the ~~manager-operator's~~master cosmetologist's license by the expiration date, a penalty fee of ~~fifteen~~fifty dollars is required.
4. **Change of name or address.** Every ~~manager-operator~~master cosmetologist shall notify the board in writing of any change of name or change of residence address.
5. **~~Certificates~~License displayed.** Every ~~manager-operator~~master cosmetologist shall conspicuously display the ~~manager-operator's certificate of registration~~master cosmetologist's license in the reception or work area of the ~~cosmetology~~-salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-26, 43-11-28

32-05-01-03. Instructors.

Every person desiring to be an instructor shall have the qualifications and passed the examination required by North Dakota Century Code chapter 43-11 applicable to student instructors and instructors and shall make application in writing to the board pursuant to North Dakota Century Code section 43-11-27 and this section.

1. **Renewal.** Every instructor shall renew the instructor's license by annually making written application to the board before December thirty-first each year, and the renewal application shall be accompanied by the twenty dollar fee and evidence of attendance at a board-approved seminar during the previous year.
2. **Penalty fee.** If the licensee fails to renew the instructor's license by the expiration date, a penalty fee of ~~fifteen~~fifty dollars is required.
3. **Seminars.** Every instructor shall attend eight hours of board-approved continuing education annually. Before attending any seminar, every instructor shall apply in writing to the board for approval of the seminar.
4. **Change of name or address.** Every instructor shall notify the board in writing of any change of name or change of residence address.
5. **~~Certificate~~License displayed.** Every instructor shall conspicuously display the instructor's ~~certificate of registration~~license in the clinic laboratory area of the cosmetology school.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-06. Esthetician.

Every person desiring to be licensed by the board as an esthetician shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to estheticians and the educational qualifications set forth in section 32-04-01-27 and shall make written application to the board to register for the esthetician's examination:

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the practical examination fee of twenty-five dollars.
2. **Renewal.** Every esthetician shall renew the esthetician's license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the esthetician's license by the expiration date, a penalty fee of ~~fifteen~~fifty dollars is required.
4. **Change of name or address.** Every esthetician shall notify the board in writing of any change of name or residence.
5. **~~Certificates~~License displayed.** Every esthetician shall conspicuously display the esthetician's ~~certificate of registration~~license in the reception or work area of the ~~cosmetology~~ salon.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-06.1. Master esthetician.

Every person desiring to be licensed by the board as a master esthetician shall furnish to the board evidence of having practiced as a licensed esthetician for one thousand hours.

A master esthetician may operate ~~as a manager-operator of~~ and supervise a salon that is operated and engaged exclusively in the practice of skin care.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant and the original license fee of twenty-five dollars.
2. **Renewal.** Every master esthetician shall renew the master esthetician's license by annually making written application to the board's office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty Fee**~~fee~~. If the licensee fails to renew the master esthetician's license by the expiration date, a penalty fee of ~~fifteen~~fifty dollars is required.
4. Change of name or address. Every master esthetician shall notify the board in writing of any change of name or residence.
5. License displayed. Every master esthetician shall conspicuously display the master esthetician's license in the reception or work area of the salon.

History: Effective February 1, 1996; amended effective July 1, 2000; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13.1, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-07. Manicurist.

Every person desiring to be licensed by the board as a manicurist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manicurists and the educational qualifications set forth in section 32-04-01-28 and shall make written application to the board to register for the manicurist's examination.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the practical examination fee of twenty-five dollars.
2. **Renewal.** Every manicurist shall renew the manicurist's license by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the manicurist's license by the expiration date, a penalty of ~~fifteen~~fifty dollars is required.
4. **Change of name or address.** Every manicurist shall notify the board in writing of any change of name or any change of residence.
5. ~~Certificate~~License displayed. Every manicurist shall conspicuously display the manicurist's ~~certificate of registration~~license in the reception or work area of the ~~cosmetology~~ salon.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

32-05-01-07.1. Master manicurist.

Every person desiring to be licensed by the board as a master manicurist shall furnish to the board evidence of having practiced as a licensed manicurist for one thousand hours.

A master manicurist may operate ~~as a manager-operator of~~ and supervise a salon that is operated and engaged exclusively in the practice of manicuring.

1. **Fee and proof.** The required proof of qualification applicable to the applicant and the original license fee of twenty-five dollars must accompany the application.
2. **Renewal.** Every master manicurist shall renew the master manicurist's license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the master manicurist's license by the expiration date, a penalty fee of ~~fifteen~~fifty dollars is required.
4. **Change of name or address.** Every master manicurist shall notify the board in writing of any change of name or residence.
5. **License displayed.** Every master manicurist shall conspicuously display the master manicurist's license in the reception or work area of the salon.

History: Effective February 1, 1996; amended effective July 1, 2000; December 1, 2005; January 1, 2017.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13.1, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

TITLE 43
INDUSTRIAL COMMISSION

JANUARY 2017

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43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, ~~or injection~~, or source well for use in enhanced recovery operations, shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial ~~disposal~~injection operations must be bonded in the amount of fifty thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed; and
 - c. A well that is abandoned pursuant to subsection 1 of North Dakota Century Code section 38-08-04 or section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a

plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:

- a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
- c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.

6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If

the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

7. **Saltwater handling facility bond.** Prior to the commencement of operations, any person proposing to operate a saltwater handling facility that is not already bonded as an appurtenance shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the saltwater handling facility must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-53.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond. Transfer of property does not release the bond. The director may refuse to transfer any saltwater handling facility from a bond if the saltwater handling facility is in violation of a statute, rule, or order.

8. **Crude oil and produced water underground gathering pipeline bond.** The bonding requirements for crude oil and produced water underground gathering pipelines are not to be construed to be required on flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.

a. Any owner of an underground gathering pipeline transferring crude oil or produced water, after April 19, 2015, shall submit to the commission and obtain its approval of a surety bond or cash bond prior to July 1, 2017. Any owner of a proposed underground gathering pipeline to transfer crude oil or produced water shall submit to the commission and obtain its approval of a surety bond or cash bond prior to placing into service. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the crude oil or produced water underground gathering pipeline must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The bond must be in the amount of fifty thousand dollars when applicable to one crude oil or produced water underground gathering pipeline system only. Such underground gathering pipelines that are less than one mile [1609.34 meters] in length may be bonded in a lesser amount if approved by the director. When the principal on the bond is operating multiple gathering pipeline systems within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided by law. A blanket bond covering one or more underground gathering pipeline systems must be in the amount of one hundred thousand dollars. The owner shall file with the director, as prescribed by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines on the bond. Each layer must include at least the following information:

(1) The name of the pipeline gathering system and other separately named portions thereof;

(2) The type of fluid transported;

(3) The pipeline composition;

(4) Burial depth; and

(5) Approximate in-service date.

b. The blanket bond covering more than one underground gathering pipeline system is limited to no more than six of the following instances of noncompliance in aggregate:

(1) Any portion of an underground gathering pipeline system that has been removed from service for more than one year and is not properly abandoned pursuant to section 43-02-03-29.1; and

(2) An underground gathering pipeline right-of-way, including associated above ground equipment, which has not been properly reclaimed pursuant to section 43-02-03-29.1.

If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission, after notice and hearing, may require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the underground gathering pipeline system and the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the commission. The commission may refuse to accept a bond or to add underground gathering pipeline systems to a blanket bond if the owner or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of underground gathering pipelines; if a civil or administrative action brought by the commission is pending against the owner or surety company; if an underground gathering pipeline system has exhibited multiple failures; or for other good cause.

c. The underground gathering pipeline bond is to remain in force until the pipeline has been abandoned, as provided in section 43-02-03-29.1, and the right-of-way, including all associated above ground equipment, has been reclaimed as provided in section 43-02-03-29.1, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

d. Transfer of underground gathering pipelines under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the underground gathering pipeline and the principal desires to be released from the bond covering the underground gathering pipeline, the principal must proceed as follows:

(1) The principal shall notify the director, in writing, of all proposed transfers of underground gathering pipelines at least thirty days before the closing date of the transfer. The director, for good cause, may waive this requirement.

Notice of underground gathering pipeline transfer. The principal shall submit, as provided by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form 15pl signed by a party duly authorized to sign on behalf of the principal.

The notice of underground gathering pipeline transfer must recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such underground gathering pipelines under the transferee's pipeline bond or, as the case may be, does accept the responsibility of

such underground gathering pipelines under the transferee's pipeline systems blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

(2) When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor must be released from the responsibility of abandoning the underground gathering pipelines and right-of-way reclamation. If such underground gathering pipelines include all underground gathering pipeline systems within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any underground gathering pipeline from a bond if the underground gathering pipeline is in violation of a statute, rule, or order.

(3) The transferee (new owner) of any underground gathering pipeline is responsible for the abandonment and right-of-way reclamation of any such underground gathering pipeline. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such underground gathering pipeline. The original or prior bond may not be released as to the abandonment and right-of-way reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such underground gathering pipeline. All liability on bonds continues until the abandonment and right-of-way reclamation of such underground gathering pipeline is completed and approved by the director.

7.9. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

8.10. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29. Well and lease equipment and gas gathering pipelines.

Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

All newly constructed underground gas gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the

pipe, and tracer wire shall be buried with any nonconductive pipes installed. When a trench for an ~~oil and gas~~ underground gas gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.

1. The operator of any underground gas gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. The operator of any underground gas gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of the pipeline centerline. An affidavit of completion shall accompany each layer containing the following information:
 - a. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.
 - b. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
 - c. The anticipated operating pressure of the pipeline.
 - d. The type of fluid that will be transported in the pipeline and direction of flow.
 - e. Pressure to which the pipeline was tested prior to placing into service.
 - f. The minimum pipeline depth of burial.
 - g. In-service date.
 - h. Leak detection and monitoring methods that will be utilized after in-service date.
 - i. Pipeline name.
 - j. Accuracy of the geographical information system layer.
2. When an ~~oil and gas~~ underground gas gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:
 - a. Disconnect and physically isolate the pipeline from any operating facility or other pipeline.
 - b. Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - c. Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - d. Remove cathodic protection from the pipeline.
 - e. Permanently plug or cap all open ends by mechanical means or welded means.
3. Within one hundred eighty days of completing the abandonment of an underground gas gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilization North American datum 83 geographic coordinate system

(GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:

- a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.
- b. The type of fluid used to purge the pipeline.

The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

History: Amended effective January 1, 1983; January 1, 2006; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29.1. Crude oil and produced water underground gathering pipelines.

1. Application of section. This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, carbon dioxide, or produced water from an oil and gas production facility for the purpose of disposal, storage, or for sale purposes. If these rules differ from the pipeline manufacturer's prescribed installation and operation practices, the pipeline manufacturer's prescribed installation and operation practices take precedence.

The requirements in this section are not applicable to flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.

2. Definitions. The terms used throughout this section apply to this section only. "Crude oil or produced water underground gathering pipeline" means an underground gathering pipeline designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes.

3. Notifications.

a. The underground gathering pipeline owner shall notify the commission, as provided by the director, at least seven days prior to commencing new construction of any underground gathering pipeline.

(1) The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:

(a) The proposed date construction is scheduled to begin.

(b) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the proposed route of the pipeline from the point of origin to the termination point.

(c) The proposed underground gathering pipeline design drawings, including all associated above ground equipment.

[1] The proposed pipeline composition, specifications (i.e. size, weight, grade, wall thickness, coating, and standard dimension ratio).

[2] The type of fluid to be transported.

[3] The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service.

[4] Proposed burial depth of the pipeline.

[5] The location and type of all road crossings (i.e. bored and cased or bored only).

[6] The location of all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies that the pipeline may traverse, if applicable.

b. The underground gathering pipeline owner shall notify the commission of any underground gathering pipeline system or portion thereof that has been removed from service for more than one year.

c. If damage occurs to any underground gathering pipeline, flow line, or other underground equipment used to transport crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas, during construction, repair, or abandonment of an underground gathering pipeline, the responsible party shall verbally notify the director immediately.

4. Design and construction.

The following applies to newly constructed crude oil and produced water underground gathering pipelines:

a. Underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids.

b. Underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and integrity testing.

c. Installation crews must be trained in all installation practices for which they are tasked to perform.

d. Underground gathering pipelines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe. Tracer wire must be buried with any nonconductive pipe installed.

e. Unless the manufacturer's installation procedures and practices provide guidance, pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks greater than two inches in diameter, debris, trash, and other foreign material not required for pipeline installation. If a trench bottom is over excavated, the trench bottom must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

The width of the trench must provide adequate clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench must be stockpiled separately from previously stripped topsoil.

f. Underground gathering pipelines that cross a township, county, or state graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.

- g. No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.
- h. The pipe must be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.
- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material that will be within two feet of the pipe must be free of rocks greater than two inches in diameter and foreign debris. Backfilling material must be compacted as appropriate during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.
- j. Cover depths must be a minimum of four feet [1.22 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83 meters] from the top of the pipe to the finished grade.
- k. Underground gathering pipelines that traverse environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies, must be installed in a manner that minimizes impacts to these areas. Any horizontal directional drilling plan prepared by the owner or required by the director, must be filed with the commission, prior to the commencement of horizontal directional drilling.

5. Pipeline reclamation.

- a. When utilizing excavation for pipeline installation, repair, or abandonment, topsoil must be stripped, segregated from the subsoils, and stockpiled for use in reclamation. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater.
- b. The pipeline right-of-way must be reclaimed as closely as practicable to original condition. All stakes, temporary construction markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of.
- c. During right-of-way reclamation all subsoils and topsoils must be returned in proper order to as close to the original depths as practicable.
- d. The reclaimed right-of-way soils must be stabilized to prevent excessive settling, sluffing, cave-ins, or erosion.
- e. The crude oil and produced water underground gathering pipeline owner is responsible for their right-of-way reclamation and maintenance until such pipeline is released by the commission from the pipeline bond pursuant to section 43-02-03-15.

6. Inspection.

All newly constructed crude oil and produced water underground gathering pipelines must be inspected by third-party independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of

this section. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, and specific training must be provided to the commission upon request. A person may not be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

7. Associated pipeline facility.

No associated above ground equipment may be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The underground gathering pipeline owner shall take steps to minimize the amount of solids stored at the pipeline facility, although the remediation of such material may be allowed onsite, if approved by the director.

8. Underground gathering pipeline as built.

a. The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director, as prescribed by the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point. The shape file must have a completed attribute table containing the required data. An affidavit of completion shall accompany each layer containing the following information:

- (1) A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
- (2) The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
- (3) The maximum allowable operating pressure of the pipeline.
- (4) The specified minimum yield strength of the pipeline.
- (5) The type of fluid that will be transported in the pipeline.

- (6) Pressure and duration to which the pipeline was tested prior to placing into service.
- (7) The minimum pipeline depth of burial from the top of the pipe to the finished grade.
- (8) In-service date.
- (9) Leak protection and monitoring methods that will be utilized after in-service date.
- (10) Any leak detection methods that have been prepared by the owner.
- (11) The name of the pipeline gathering system and any other separately named portions thereof.
- (12) Accuracy of the geographical information system layer.

b. The requirement to submit a geographical information system layer is not to be construed to be required on flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

9. Operating requirements.

The maximum operating pressure for all crude oil and produced water underground gathering pipelines may not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of the pipeline, whichever is less. The crude oil or produced water underground gathering pipeline must be equipped with adequate controls and protective equipment to prevent the pipeline from operating above the maximum operating pressure.

10. Leak protection, detection, and monitoring.

All crude oil and produced water underground gathering pipeline owners shall file with the commission any leak protection and monitoring plan prepared by the owner or required by the director, pursuant to North Dakota Century Code section 38-08-27.

If any leak detection plan has been prepared by the owner, it must be submitted to the director.

All crude oil or produced water underground gathering pipeline owners shall develop and maintain a data sharing plan. The plan must provide for real-time sharing of data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale. If a discrepancy in the shared data is observed, the party observing the data discrepancy shall notify all other parties and action must be taken to determine the cause. A record of all data discrepancies must be retained by the crude oil or produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the commission.

11. Spill response.

All crude oil and produced water underground gathering pipeline owners shall maintain a spill response plan during the service life of any crude oil or produced water underground gathering pipeline. The plan should detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan should be tailored to the specific risks in the localized area. Response capabilities should address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

12. Corrosion control.

- a. Underground gathering pipelines must be designed to withstand the effects of external corrosion and maintained in a manner that mitigates internal corrosion.
- b. All metallic underground gathering pipelines installed must have sufficient corrosion control.
- c. All coated pipe must be electronically inspected prior to placement using coating deficiency (i.e. holiday) detectors to check for any faults not observable by visual examination. The holiday detector must be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested. During installation all joints, fittings, and tie-ins must be coated with materials compatible with the coatings on the pipe. Coating materials must:
 - (1) Be designed to mitigate corrosion of the buried pipeline;
 - (2) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
 - (3) Be sufficiently ductile to resist cracking;
 - (4) Have enough strength to resist damage due to handling and soil stress;
 - (5) Support any supplemental cathodic protection; and
 - (6) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.
- d. Cathodic protection systems must meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.
- e. If internal corrosion is anticipated or detected, the underground gathering pipeline owner shall take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods. Corrosion inhibitors must be used in sufficient quantity to protect the entire part of the pipeline system that the inhibitors are designed to protect.

13. Pipeline integrity.

A crude oil or produced water underground gathering pipeline owner may not operate a pipeline unless it has been pressure tested and demonstrated integrity. In addition, an owner may not return to service a portion of pipeline which has been repaired, replaced, relocated, or otherwise changed until it has demonstrated integrity.

- a. The crude oil and produced water underground gathering pipeline owner shall notify the commission prior to commencement of any pipeline integrity test to allow a representative of the commission to witness the testing process and results.
- b. An independent inspector's certificate of hydrostatic or pneumatic testing of a crude oil or produced water underground gathering pipeline must be submitted within sixty days of the underground gathering pipeline being placed into service and include the following:
 - (1) The name of the pipeline gathering system and any other separately named portions thereof;

- (2) The date of the test;
- (3) The duration of the test;
- (4) The length of pipeline which was tested;
- (5) The maximum and minimum test pressure;
- (6) The starting and ending pressure;
- (7) A copy of the chart recorder results; and
- (8) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the centerline of the portion of the pipeline that was tested.

c. All crude oil and produced water underground gathering pipeline owners shall maintain a pipeline integrity demonstration plan during the service life of any crude oil or produced water underground gathering pipeline. The director, for good cause, may require a pipeline integrity demonstration on any crude oil or produced water underground gathering pipeline.

14. Pipeline repair.

Each owner, in repairing an underground gathering pipeline or pipeline system, shall ensure that the repairs are made in a manner that prevents damage to persons or property.

An owner may not use any pipe, valve, or fitting, for replacement or repair of an underground gathering pipeline, unless it is designed to meet the maximum operating pressure.

a. At least forty-eight hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner shall notify the commission, as provided by the director, except in an emergency.

b. Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the centerline of the repaired or replaced pipeline and an affidavit of completion containing the following information:

(1) A statement that the pipeline was repaired in compliance with section 43-02-03-29.1.

(2) The reason for the repair or replacement.

(3) The length of pipeline that was repaired or replaced.

(4) Pressure and duration to which the pipeline was tested prior to returning to service.

c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline is prohibited, except in an emergency. A modification of these requirements may be granted by the director if the pipeline can be safely clamped or squeezed as prescribed by the manufacturer's specifications. Any damaged portion of a produced water underground gathering pipeline that has been clamped or squeezed must be replaced before it is returned to service.

15. Pipeline abandonment.

a. When an underground gathering pipeline or any part of such pipeline is abandoned as defined under subsection 1 of North Dakota Century Code section 38-08-02 after March 31, 2014, the owner shall leave such pipeline in a safe condition by conducting the following:

- (1) Disconnect and physically isolate the pipeline from any operating facility, associated above ground equipment, or other pipeline.
- (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
- (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
- (4) Remove cathodic protection from the pipeline.
- (5) Permanently plug or cap all open ends by mechanical means or welded means.
- (6) The site of all associated above ground equipment must be reclaimed pursuant to section 43-02-03-34.1.

b. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:

- (1) A statement that the pipeline was abandoned in compliance with section 43-02-03-29.1.
- (2) The type of fluid used to purge the pipeline.
- (3) The date of pipeline abandonment.
- (4) The length of pipeline abandoned.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil production equipment, dikes, and seals.

Storage of oil in underground or partially buried tanks or containers is prohibited. Surface oil tanks and production equipment must be devoid of leaks and in good condition constructed of materials resistant to the effects of produced fluids or chemicals that may be contained therein. Unused tanks and production equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year. ~~Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.~~

Dikes must be erected around oil tanks at any new production facility ~~within thirty days after the well has been completed~~ prior to completing any well. Dikes must be erected and maintained around oil tanks at productionall facilities ~~built prior to July 1, 2000, when deemed necessary~~ unless a waiver is granted by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid

production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

Within one hundred eighty days from the date the operator is notified by the commission, a perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment and to divert surface drainage away from the site around all storage facilities and production sites that include storage tanks, have a daily throughput of more than one hundred barrels of fluid per day, and include production equipment or load lines that are not contained within secondary containment dikes. The director may consider an extension of time to implement these requirements if conditions prevent timely construction, or a modification of these requirements if other factors are present that provide sufficient protection from environmental impacts.

Numbered ~~metal~~weather-resistant security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010; April 1, 2012; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.3. Treating plant construction and operation requirements.

1. Before construction of a treating plant begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable to the industrial commission. In no case shall the bond amount be set lower than fifty thousand dollars.
2. Treating plant sites and associated facilities or appropriate parts thereof shall be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All storage tanks shall be kept free of leaks and in good condition. Storage tanks for saltwater shall be constructed of, or lined with, materials resistant to the effects of saltwater.
4. All waste, recovered solids, and recovered fluids shall be stored and handled in such a manner to prevent runoff or migration offsite.
5. Dikes of sufficient dimension to contain the total capacity of the maximum volume stored must be erected and maintained around all storage and processing tanks. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. All processing equipment shall be underlain by a synthetic impermeable material, unless waived by the director. The site shall be sloped and diked to divert surface drainage away from the site. The operations of the treating plant shall be conducted in such a manner as to prevent leaks, spills, and fires. All accidentally discharged fluids and wastes shall be promptly and properly removed and shall not be allowed to remain standing within the diked area or on the treating plant premises. All such incidents shall be properly cleaned up, subject to approval by the director. All such incidents shall be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.
6. A perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around the treating plant and to divert surface drainage away from the site if deemed necessary by the director.

7. Immediately upon the commencement of treatment operations, the operator shall notify the commission in writing of such date.
- ~~7.8.~~ The operator of a treating plant shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.
- ~~8.9.~~ Storage pits, waste pits, or other earthen storage areas shall be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
- ~~9.10.~~ Burial of waste at any treating plant site shall be prohibited. All residual water and waste, fluid or solid, shall be disposed of in an authorized facility.
- ~~40.11.~~ The operator shall take steps to minimize the amount of residual waste generated and the amount of residual waste temporarily stored onsite. Solid waste shall not be stockpiled onsite unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
- ~~44.12.~~ If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis shall be performed by a certified laboratory and shall adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.
- ~~42.13.~~ Treating plants shall be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and shall comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.
- ~~43.14.~~ The beginning of month inventory, the amount of waste received and the source of such waste, the volume of oil sold, the amount and disposition of water, the amount and disposition of residue waste, fluid or solid, and the end of month inventory for each treating plant shall be reported monthly on form 5p with the director on or before the first day of the second succeeding month, regardless of the status of operations.
- ~~44.15.~~ Records necessary to validate information submitted on form 5p shall be maintained in North Dakota.
- ~~45.16.~~ All proposed changes to any treating plant are subject to approval by the commission. Updated schematics shall be furnished to the commission within thirty days following any changes to the treating plant.
- ~~46.17.~~ The operator shall comply with all applicable rules and orders of the commission. All rules in this chapter governing oil well sites shall also apply to any treating plant site.

History: Effective April 1, 2014; amended effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53.3. Saltwater handling facility construction and operation requirements.

1. Bond requirement. Before construction of a saltwater handling facility begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond must be in the amount of fifty thousand dollars and must be payable to the industrial commission. The commission, after notice and hearing, may require a higher bond amount. Such additional amounts for bonds must be related to the economic value of the facility and the expected cost of decommissioning and site reclamation, as determined by the commission. The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply

with all laws, rules and regulations, and orders of the commission; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

2. Saltwater handling facility sites or appropriate parts thereof must be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All waste, recovered solids, and fluids must be stored and handled in such a manner to prevent runoff or migration offsite.
4. Surface tanks may not be underground or partially buried, must be devoid of leaks, and constructed of, or lined with, materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.
5. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility. Dikes must be erected around saltwater tanks at any new facility prior to introducing fluids. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. The operations of the saltwater handling facility must be conducted in such a manner as to prevent leaks, spills, and fires. Discharged liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas. All such incidents must be properly cleaned up, subject to approval by the director. All such incidents must be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.
6. Within one hundred eighty days from the date the operator is notified by the commission, a perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around the facility and to divert surface drainage away from the site. The director may consider an extension of time to implement these requirements if conditions prevent timely construction or a modification of these requirements if other factors are present that provide sufficient protection from environmental impacts.
7. The operator shall take steps to minimize the amount of solids stored at the facility.
- ~~7.8.~~ Immediately upon the commissioning of the saltwater handling facility, the operator shall notify the commission in writing of such date.
- ~~8.9.~~ The operator of a saltwater handling facility shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.
- ~~9.10.~~ Storage pits, waste pits, or other earthen storage areas must be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization must be filed with the commission.
- ~~10.11.~~ Burial of waste at any saltwater handling facility site is prohibited. All residual water and waste, fluid or solid, must be disposed of in an authorized facility.
- ~~11.12.~~ If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis must be performed by a certified

laboratory and must adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.

- | ~~42.13.~~ 43.13. Saltwater handling facilities must be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and must comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.
- | ~~43.14.~~ 44.14. All proposed changes to any saltwater handling facility are subject to prior approval by the director.
- | ~~44.15.~~ 45.15. Upon completion of any saltwater handling facility modification, the operator shall file a report of the modification on a sundry notice (form 4) with the director within thirty days. The report must include details of the modification and include a schematic drawing of the saltwater handling facility site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes as well as a calculated containment volume, and the location of all flow lines.
- | ~~45.16.~~ 46.16. Any salable crude oil recovered from a saltwater handling facility must be reported on a form 5 SWD.
- | ~~46.17.~~ 47.17. The operator shall comply with all laws, rules and regulations, and orders of the commission. All rules in this chapter governing oil well sites also apply to any saltwater handling facility site.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

TITLE 49
MESSAGE, BOARD OF

JANUARY 2017

CHAPTER 49-01-01

49-01-01-01. Organization of board of massage.

1. **History and function.** The 1959 legislative assembly passed the Massage Registration Act, codified as North Dakota Century Code chapter 43-25. ~~This chapter requires the~~The governor ~~to appoint~~appoints the board of massage. The board, ~~generally speaking,~~ monitors the relationship and interaction between the licensee and the public. ~~It is the responsibility of the board to protect and protects~~ the public ~~against poorly trained massage therapists from those who are unqualified to practice massage therapy in North Dakota.~~
2. ~~**Board membership.** The board consists of three massage therapist members and two consumer members appointed by the governor. The massage therapist members serve three-year terms and the consumer members serve two-year terms, and not more than one term in each category expires each year.~~
3. ~~**Secretary-treasurer.** The secretary-treasurer of the board is appointed by the board and is responsible for administration of the board's activities.~~
4. ~~**Inquiries.** Inquiries regarding the board may be addressed to:~~

~~Ms. Karen Wejahn
State~~North Dakota Board of Massage
~~P.O. Box 218~~Website: ndboardofmassage.com
~~Beach, ND 58621~~Phone: 877-268-8139

History: Amended effective May 1, 1988; February 1, 1993; January 1, 2001; January 1, 2005; January 1, 2017.

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

Law Implemented: NDCC ~~28-32-02.1~~28-32-02, 43-25-05

CHAPTER 49-01-02

49-01-02-02. License applications.

To receive a license as a massage therapist, the applicant must complete an application provided by the board and must include the following additional information:

1. Sufficient proof to the board that the applicant has satisfied the ~~education~~educational requirements in article 49-02.
2. ~~A copy of the applicant's high school diploma or proof of equivalent education.~~
- ~~3. A statement from a licensed physician, written in the last year, that the applicant is free of signs or symptoms of contagious diseases or that the applicant has been trained in taking sufficient precautions to prevent the spread of communicable diseases.~~
- ~~4. Passport size photo.~~
3. Proof of identity, including documentation of any name previously used by the applicant.
4. Proof of a passing score on a test approved by the board. The test results must be received directly from the organization administering or providing the test.
5. Completion of a jurisprudence examination on laws applicable to massage therapy in North Dakota.

~~The application and additional information must be postmarked or actually received by the secretary-treasurer at least thirty days before the examination date in order for the applicant to take the examination.~~

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-07, 43-25-09

49-01-02-03. Expired licenses.

1. A ~~license as a~~ massage ~~therapist~~therapy license is issued on an annual basis. ~~A license and expires on January first~~ if the required renewal fee has not been paid ~~on or by that~~the renewal date.
2. Practicing massage after a massage therapist's license has expired constitutes the unauthorized practice of massage. Practicing massage under an expired license is a violation of North Dakota Century Code section 43-25-03 and is grounds for ~~the board to refuse to renew the person's license under subsection 3~~disciplinary action by the board under North Dakota Century Code section 43-25-10.
3. A license that has expired may be renewed within one year from the date of expiration upon payment of the ~~required renewal fee~~applicable fees and submitting ~~current~~proof of continuing education hours, if required. The fee will not be prorated for any period during which the license was expired.
4. ~~An application for renewal of a license more than one year after the license expired will be considered an application for initial licensure. This requirement includes passing the current licensing examination and meeting all other licensing requirements.~~
- ~~5. A licenseholder shall notify the board of any change in the licenseholder's name or mailing address, or of any change in the physical~~business address ~~of one~~, name of the licenseholder's

places of business, and phone number, within sixty days after the change occurs. Failure to notify the board may result in disciplinary action.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-03, 43-25-09

49-01-02-04. Grounds for discipline.

A licensed massage therapist may be subject to disciplinary action by the board for any of the grounds authorized in North Dakota Century Code chapter 43-25, including:

1. Failure by the licensee to identify himself or herself before beginning the massage ~~and failure;~~
2. Failure as an instructor to provide sufficient supervision of massage by students; or
- ~~2-3.~~ Commission of one or more acts which indicate the licensee lacks good moral character and is therefore ineligible to be licensed by the board, including:
 - a. Engaging in criminal conduct involving the client as a victim;
 - b. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current massage client of the licensee, even if the client attempts to sexualize the relationship; ~~and.~~
 - c. Consuming alcohol while providing massage services or with a client in a ~~professional setting, including a~~ massage establishment. ~~A professional setting means an area where the environment is set up with equipment and supplies for providing massage.~~
 - d. Intentionally viewing a completely or partially disrobed client, or disregarding proper draping procedures in the course of treatment if the viewing is not legitimately related to treatment under current practice standards.
 - e. Having had a license revoked or suspended, or other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.
 - f. Failing to report to the board when there is direct knowledge of any unprofessional, incompetent, or illegal acts that appear to be in violation of North Dakota Century Code chapter 43-25 or any rules established by the board.
 - g. Failure to apply massage based on current standards of practice, such as those provided by professionally or nationally recognized massage therapy organizations.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-07, 43-25-10

49-01-02-05. Continuing education.

1. To renew a license as a massage therapist, the licenseholder must submit sufficient proof ~~to the board of completion~~ of continuing education ~~every two years~~ to the board as outlined in North Dakota Century Code section 43-25-09, including the date, time, and location of the instruction, the name of the program or course, the instructor or instructors, and the provider of the program or course.
2. To qualify as continuing education under this section, the instruction must be offered by a qualified instructor and be directly related to the practice of massage therapy. The course of

instruction must be approved ~~in advance~~ by the board. The licenseholder or provider must identify the instructor of the course and describe the qualifications of the instructor, the topics covered during the course, and the total hours for which the licenseholder seeks approval. ~~Any continuing education is required to be preapproved by the board.~~ When deciding whether to approve continuing education, the board will consider the ~~quality and reputation~~ credentials of the provider and instructor, ~~including consideration whether the provider or instructor is nationally recognized or accredited in the field of education of massage therapy or the specific subject being taught, and whether the instructor has the education and other requirements to teach the subject for credit as contained in section 49-02-02-02.~~ Further, ~~the~~ The board ~~must also will~~ determine whether if the content of the course is appropriate for continuing education of massage therapy.

3. Continuing education may be obtained by remote means ~~such as telephone, internet, correspondence course, or videotape.~~ Any remote continuing education is required to be preapproved by the board. When deciding whether to approve remote continuing education, the board will consider the quality and reputation of the provider and instructor, including consideration whether the provider or instructor is nationally recognized or accredited in the field of education of massage therapy or the specific subject being taught, and whether the instructor has the education and other requirements to teach the subject for credit as contained in section 49-02-02-02. Further, the board must determine whether the content of the course is appropriate for continuing education of massage therapy and whether the topic is suitable for training by remote means, such as ethics or business practices. The board may also consider whether the provider has adopted a procedure or method to determine that the licenseholder has actually reviewed the materials, such as by testing or other ~~methods~~ pursuant to board approval.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017.

General Authority: NDCC 43-25-09

Law Implemented: NDCC 43-25-09

CHAPTER 49-02-01 GENERAL EDUCATION REQUIREMENTS

Section

49-02-01-01	Hours of Instruction
49-02-01-02	Location of Instruction
49-02-01-03	Eligible Instruction <u>[Repealed]</u>
49-02-01-04	Liaison

49-02-01-01. Hours of instruction.

1. To be eligible for a license as a massage therapist, an applicant must present a diploma or credentials issued by one or more schools of massage or school offering a massage program which indicate a cumulative total of seven hundred fifty hours of supervised instruction as determined under this article.
2. As used in this article, a "clock-hour" or hour of classroom or practical instruction means a sixty-minute block of time consisting of a minimum of fifty minutes of instruction with appropriate breaks.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-01-02. Location of instruction.

The education requirements in this article may be satisfied by instruction provided at a single school of massage or school offering a massage program or by attendance at more than one school, as long as the hours of total instruction provided to the student are not redundant and satisfy the other requirements in this article. An applicant shall submit a diploma or other credentials from each school attended.

History: Effective January 1, 2001; amended effective January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-01-03. Eligible instruction.

Repealed effective January 1, 2017.

~~—Unless waived by the board for good cause, instruction must be provided within the five years immediately preceding the date of the license application to be counted toward the total hours of instruction.~~

~~**History:** Effective January 1, 2001.~~

~~**General Authority:** NDCC 28-32-02, 43-25-07~~

~~**Law Implemented:** NDCC 43-25-07~~

49-02-01-04. Liaison.

Each massage school or school offering a massage program in the state of North Dakota shall designate one full-time massage therapist faculty person in the state, who shall be the liaison to the board. The liaison shall submit a copy of the school's curriculum to the board each year. Out-of-state schools may select to have a liaison to the board. ~~The individual selected must have the authority to maintain curriculum in compliance with North Dakota law.~~

History: Effective July 1, 2010; amended effective January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

CHAPTER 49-02-02

49-02-02-01. Hours of classroom instruction.

~~The required seven hundred fifty total hours of supervised instruction required under this article must include at least four hundred fifty required hours of classroom instruction as stated under section 49-02-02-03.~~ "Required hours of classroom instruction" means actual hours in attendance in class under supervised instruction in the presence of an instructor, including synchronous or live remote education. Other classes may be through asynchronous remote education.

History: Effective January 1, 2001; amended effective July 1, 2010; [January 1, 2017](#).

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-02-02. Eligible classroom instruction.

1. Except as otherwise provided in this section or waived by the board for good cause, classroom instruction under this chapter must be provided by a licensed massage therapist at a recognized and approved school of massage and credit may not be given for prior educational instruction. In order to teach in North Dakota, the massage therapist must have at least three years of hands-on experience as a massage therapist, hold a current North Dakota license, and be in good standing with the board.
2. An instructor of anatomy, physiology, or pathology is not required to be a licensed massage therapist, but must have earned a recognized master's degree or higher, in an appropriate field of study. Instructors of first aid, [hygiene, sanitation and disease prevention](#), CPR, business practice [and career development](#), or ethics must have appropriate credentials, but need not be licensed massage therapists.
3. A school of massage may give a student credit for prior educational instruction which was provided by a postsecondary institution. ~~To receive credit, the prior instruction must have been provided by a qualified instructor within the five-year period immediately preceding the date of the application for licensure.~~ The maximum credit for prior instruction which may be given under this subsection is provided in subsection [45](#) of section 49-02-02-03.

~~4. Correspondence courses are not recognized by the board under this section.~~

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; [January 1, 2017](#).

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-02-03. Required curriculum.

1. The supervised required hours of classroom instruction received by an applicant must satisfy the following curriculum requirements:
 - a. ~~At least one~~[One](#) hundred fifty hours of anatomy ~~and~~, physiology, [and kinesiology](#).
 - b. ~~At least forty five~~[Forty](#) hours of pathology.
 - c. ~~At least ninety hours of kinesiology, including origin, insertion, action, and innervation.~~
 - ~~d. At least, but not more than, ten~~[Ten](#) hours of first aid, ~~hygiene~~, and CPR. At the time of graduation, the applicant must hold a valid current CPR card certified by a nationally recognized organization to provide CPR instruction.

~~e.d. At least thirty hours of business practices and thirty hours of professional ethics. One hundred and thirty hours of introductory massage therapy courses, including basic and allied modalities, contraindications, sanitation, disease prevention, and massage theory.~~

e. One hundred seventy-five hours of practical application and clinical practice.

2. The applicant must also satisfy the following curriculum requirements which do not require supervised classroom instruction:

a. Fifty hours of business practices, career development, and professional ethics.

b. Seventy-five hours of clinical practice.

c. One hundred twenty hours of other courses directly related to massage therapy.

~~2.3.~~ Each hour of instruction may be applied to only one of the above categories.

~~3.4.~~ To be counted under this section, the instruction must reflect current scientific knowledge and standards.

~~4.5.~~ The number of classroom hours specified in subdivisions a through ~~eb~~ of subsection 1 also is the maximum amount of prior education credits in each subject which may be given under section 49-02-02-02. ~~The remaining one hundred twenty-five hours must include elements of contraindications, benefits of massage, universal precautions, body mechanics, business, history, ethics, legalities of massage, and professional standards regarding draping and modesty.~~

~~5.6.~~ Hours of instruction for programs which measure their instruction in credit hours per semester or per quarter shall be determined as follows:

a. For semester credits, fifteen clock-hours of lecture equals one credit hour and thirty clock-hours of practical instruction (clinical or lab) equals one credit hour.

b. For quarter credits, ten clock-hours of lecture equals one credit hour and twenty clock-hours of practical instruction (clinical or lab) equals one credit hour.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

CHAPTER 49-02-03
PRACTICAL INSTRUCTION AND SUPERVISION OF STUDENTS

Section

49-02-03-01	Hours of Practical Instruction
49-02-03-02	Direct Supervision of Students
49-02-03-03	Required Curriculum <u>[Repealed]</u>

49-02-03-01. Hours of practical instruction.

The seven hundred fifty total hours of supervised instruction required under this article must include at least ~~three~~two hundred ~~fifty~~ hours of practical instruction, consisting of practical application and clinical practice. "Hours of practical instruction" means actual hours of providing massage to another person, or receiving massage from a fellow student, under the direct supervision of a licensed massage therapist. In order to provide direct supervision, the licensed massage therapist must have at least three years of licensed, hands-on experience as a massage therapist.

History: Effective January 1, 2001; amended effective January 1, 2005; January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

49-02-03-02. Direct supervision of students.

As used in this chapter and in North Dakota Century Code chapter 43-25, "direct supervision of a licensed massage therapist" has the following meaning:

1. For a student receiving practical instruction in the classroom setting, the supervising massage therapist must be in the same room as the student at all times during the massage. A massage therapist may supervise up to eight massages at a time (sixteen students) under this subsection.
2. For a student receiving practical instruction through field experience or a student clinic, the supervising massage therapist must be present on the premises at all times during the massage, which means the ~~instructors are~~instructor is readily accessible to the students at all times. A massage therapist may supervise up to ~~six~~eight massages at a time, sixteen students, under this subsection.
3. Notwithstanding any other provision in this section, a supervising massage therapist must exercise an appropriate degree of supervision at all times. Failure to do so is grounds for disciplinary action by the board.
4. Any student practicing outside of the school under a field experience or internship in North Dakota must be supervised by a licensed massage therapist, ~~must meet the requirements of subsection 2 of section 49-02-03-03, and the student's school must register the pertinent facts with the board.~~ Before applying massage techniques to a member of the public, as a part of the student's education, a student must have completed, or received prior education credit for, at least two hundred twenty-five hours of classroom instruction and at least one hundred fifty hours of practical instruction in the classroom setting.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-04, 43-25-07

49-02-03-03. Required curriculum.

Repealed effective January 1, 2017.

- ~~1. The instruction received by the applicant must include the elements of massage therapy, technique, and practice which includes gliding strokes, kneading, direct pressure, deep friction, superficial warming techniques, percussion, compression (pumping), vibration, jostling, shaking, and rocking.~~
- ~~2. Before applying massage techniques to a member of the public, as a part of the student's education, a student must have completed, or received prior education credit for, at least two hundred twenty-five hours of classroom instruction and at least one hundred fifty hours of practical instruction in the classroom setting.~~

History: Effective January 1, 2001; amended effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

CHAPTER 49-03-01

49-03-01-01. Sanitation, location, and conditions.

1. The portion of a massage establishment in which a massage is provided, and any waiting room and hallway leading to that area, must be in a clean and sanitary condition at all times. This subsection does not apply when the massage is provided ~~to a person in the person's~~ in a client's own home, or when the massage is provided as a public demonstration in a location other than the massage therapist's usual establishment.
2. If the massage establishment is also the residence of the massage therapist providing the massage, the room must be set up as a professional setting and maintained in a clean and sanitary condition when it is being used for massage purposes.
3. Any mirrors ~~or~~ and windows in the massage establishment will be ~~located and~~ positioned or covered in a manner to maintain the privacy of the person receiving the massage at all times during the massage and while the client is dressing and undressing.
4. A therapist must provide draping and treatment in a way that ensures the personal safety, comfort, and privacy of the client.
5. The therapist is responsible for maintaining all equipment and supplies in good working order and in accordance with any manufacturer's instruction.
6. It is unlawful for a massage therapist to provide alcohol to a client in the portion of a massage establishment in which a massage is provided.

History: Effective January 1, 2001; amended effective July 1, 2010; January 1, 2017.

General Authority: NDCC 28-32-02, 43-25-03

Law Implemented: NDCC 43-25-03

TITLE 55
NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS FOR

JANUARY 2017

CHAPTER 55-02-01 GENERAL PROVISIONS

Section

55-02-01-01	Source of Authority
55-02-01-02	General Definitions
55-02-01-03	Board Meetings
55-02-01-04	Board Duties [Repealed]
55-02-01-05	Duties of Board of Officers
55-02-01-06	Administration of Examinations
55-02-01-07	Requirements for Initial Licensure
55-02-01-08	Application for Initial Licensure
55-02-01-09	Denial of Initial <u>Application for</u> Licensure
55-02-01-10	Examinations
55-02-01-11	Grading Examinations
55-02-01-12	Continuing Education
55-02-01-13	Program of Study in Accredited Educational Institutions [Repealed]
55-02-01-14	Certification of Program of Study for Federal Financial Participation [Repealed]
55-02-01-15	Licensure by Endorsement
55-02-01-15.1	Emergency License
55-02-01-16	Registration and Renewal of Licenses
55-02-01-17	Denial, Suspension, and Revocation of Licenses
55-02-01-18	Complaint Procedures
55-02-01-19	Conduct of Hearings [Repealed]
55-02-01-20	Endorsement [Repealed]
55-02-01-21	Inactive License Status
55-02-01-22	Display of Permits or Licenses [Repealed]
55-02-01-23	Duplicate Licenses [Repealed]
55-02-01-24	Applicability - Legal Effect - Severability [Repealed]

55-02-01-05. Duties of board of officers.

1. The chairperson shall preside at all meetings of the board, ~~and shall sign all official documents of the board.~~
2. In the absence of the chairperson, the vice chairperson shall preside at meetings, and perform all duties usually performed by the chairperson.
3. The secretary-treasurer shall keep a full and complete record of the minutes of the meetings, maintain records pertaining to licensees and registrants, maintain financial records approved by the board and the fiscal authorities of the state, and make payments with the approval of

the board. Any functions of the secretary-treasurer may be delegated by the board to the executive director.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 2002; July 1, 2010; January 1, 2017.

General Authority: NDCC 43-34-07, 43-34-09

Law Implemented: NDCC 43-34-07, 43-34-09

55-02-01-07. Requirements for initial licensure.

A person applying for initial licensure must meet the following requirements:

1. The person is at least eighteen years of age and of good moral character.
2. The person has a baccalaureate degree from an accredited college or university, or has an associate degree from an accredited college or university and has practiced as a licensed nursing home administrator in any jurisdiction for at least five of the last six years.
3. The person has completed a board-approved administrator-in-training program, practiced as a licensed nursing home administrator in any jurisdiction for at least two years preceding the application, ~~or~~ is certified by the American college of health care administrators as a nursing home administrator, or has met the qualifications for the health services executive license as established by the national association of long term care administrator boards.
4. ~~The~~ if the person has not been licensed in another state and has not been practicing as an administrator of record in another state for five of the last six years, the person ~~passed~~ must pass the examinations required by section 55-02-01-10 within twenty-four months before or after the date the person applies for initial licensure.

History: Amended effective July 1, 1979; February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010; January 1, 2017.

General Authority: NDCC 43-34-03, 43-34-04, 43-34-08, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-09, 43-34-12

55-02-01-08. Application for initial licensure.

An applicant for initial licensure as a nursing home administrator must make application in writing on forms provided by the board, furnish evidence satisfactory to the board that the applicant meets the licensure requirements as provided for in section 55-02-01-07, pay a fee of two hundred fifty dollars, pay the cost charged by the national association of ~~boards of examiners of long term~~ long term care administrators ~~administrator boards~~ for the examination if the applicant must take the examination under section 55-02-01-07, and submit to a statewide and nationwide criminal history record check. All costs associated with the criminal history record check are the responsibility of the applicant. An applicant for initial licensure must submit two references from individuals engaged in business, or professional, ~~or religious~~ work.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010; January 1, 2017.

General Authority: NDCC 43-34-03, 43-34-04, 43-34-05, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-03.2, 43-34-05, 43-34-09

55-02-01-09. Denial of ~~initial~~ application for licensure.

1. An applicant for ~~initial~~ licensure who has been denied shall be given written notification by the board of the denial, the reasons for denial, and of the applicant's right to a hearing.

2. An applicant for ~~initial~~ licensure who has been denied may petition the board in writing within thirty days of notification of the denial for a hearing and a review of the applicant's application in accordance with North Dakota Century Code chapter 28-32.

History: Amended effective February 1, 1993; December 1, 2002; January 1, 2017.

General Authority: NDCC 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-09

55-02-01-10. Examinations.

1. Each person applying for licensure as a nursing home administrator, except a person applying for emergency licensure or licensure by endorsement, is required to pass an examination provided by the national association of long term care administrator boards ~~of examiners of long term care administrators~~ within twenty-four months before or after the date the person applies for licensure, unless the applicant has been licensed in another state and has been practicing as an administrator of record in another state for five of the last six years.
2. Each person applying for licensure as a nursing home administrator, except a person applying for emergency licensure, is required to pass a state laws and rules examination administered by the board.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010; January 1, 2017.

General Authority: NDCC 43-34-03, 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-09

55-02-01-11. Grading examinations.

1. A passing score for the examination required by subsection 1 of section 55-02-01-10 shall be the passing score established by the national association of long term care administrator boards ~~of examiners of long term care administrators~~.
2. A passing score for the examination required by subsection 2 of section 55-02-01-10 shall be the passing score established by the board.

History: Amended effective July 1, 1981; June 1, 1983; February 1, 1993; June 1, 1996; December 1, 2002; July 1, 2010; January 1, 2017.

General Authority: NDCC 43-34-03, 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-09

55-02-01-12. Continuing education.

1. ~~Twenty~~ A licensee with an active license must obtain twenty hours of continuing education ~~must be obtained~~ each calendar year ~~except during~~ following the first calendar year of licensure. During the first calendar year of licensure, a licensee with an active license must obtain:
 - a. Twenty hours of continuing education if licensed before April first;
 - b. Fifteen hours of continuing education if licensed on or after April first, but before July first;
or
 - c. Ten hours of continuing education if licensed on or after July first, but before October first; or
 - d. Five hours of continuing education if licensed on or after October first.
2. Continuing education hours must be obtained from providers approved by the board.

3. The maximum number of continuing education hours a licensee can obtain through online or internet sources to satisfy the requirements of this section is limited to ten.

4. Documentation of continuing education must be submitted with a renewal application.

History: Amended effective February 1, 1993; December 1, 1998; December 1, 2002; January 1, 2017.

General Authority: NDCC 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-09, 43-34-10

55-02-01-15.1. Emergency license.

Upon application, the board may issue an emergency license to any person who:

1. Pays a fee of two hundred fifty dollars.
2. Meets the requirements of subsection 1 of section 55-02-01-07.
3. Submits to a statewide and nationwide criminal history record check. All costs associated with the criminal history record check are the responsibility of the applicant.
4. Will be supervised by a preceptor at the expense of the nursing home. Supervision requires communication between the preceptor and the licensee at least twice in each week and at least one visit in each month by the preceptor to the nursing home where the licensee is employed. The preceptor shall make monthly written reports to the board.
5. Meets any other requirements that the board finds necessary.

6. The emergency license is valid for a period of up to ninety consecutive days from the date the board issues the emergency license.

7. The board may deny subsequent requests for emergency licensure.

History: Effective December 1, 2002; amended effective July 1, 2010; January 1, 2017.

General Authority: NDCC 43-34-04, 43-34-05, 43-34-09

Law Implemented: NDCC 43-34-03.2, 43-34-05, 43-34-09, 43-34-11

55-02-01-16. Registration and renewal of licenses.

1. Any person who holds a license issued by the board shall be registered with the board. The license expires on the thirty-first day of December in the year of its issuance and is renewable annually upon payment of the license fee. The board shall transmit renewal forms to all licensees whose licenses expire on December thirty-first.
2. The licensee shall pay an annual renewal fee of two hundred fifty dollars.
3. An applicant for renewal shall provide documentation of completion of the continuing education required by section 55-02-01-12.
4. The board shall maintain a register of all licensed nursing home administrators. The board shall maintain a complete file of such pertinent information as may be deemed necessary.
5. A licensee who does not meet the requirement for renewal by December thirty-first may renew the license by meeting the requirements and paying a late renewal fee in the amount of twenty-five dollars per month for each month following December thirty-first. If the requirements for renewal are not met within six months of expiration, the license shall not be renewed. If the license is not renewed, the individual must apply for and meet the requirements for initial licensure, including passing the examinations required by section 55-02-01-10 within one year of making the application.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; November 1, 2005; July 1, 2010; [January 1, 2017](#).

General Authority: NDCC 43-34-04, 43-34-05, 43-34-09

Law Implemented: NDCC 43-34-05, 43-34-09, 43-34-10

55-02-01-17. Denial, suspension, and revocation of licenses.

The board may deny an application for licensure if the applicant has violated any of the provisions of this section. The board shall provide notice of denial of an application for licensure and inform the applicant of the opportunity for a hearing. The board, after notice and opportunity for hearing, may ~~deny an application for license,~~ suspend, or revoke a license for a nursing home administrator, or may reprimand or otherwise discipline a licensee, if the licensee ~~or applicant for license:~~

1. Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the rules and regulations of the board pertaining thereto;
2. Has violated any of the provisions of the law, rules, or regulations of the licensing authority having jurisdiction over the operation and licensing of nursing homes;
3. Has practiced fraud, deceit, or misrepresentation or provided misleading omission or material misstatement of fact in securing, procuring, renewing, or maintaining a nursing home administrator license;
4. Has engaged in fraudulent, deceptive, or dishonest conduct in the licensee's capacity as a nursing home administrator;
5. Has committed acts of professional misconduct or professional negligence;
6. Has practiced without a license;
7. Has transferred or surrendered possession of the licensee's license to any other person;
8. Has engaged in fraudulent, misleading, or deceptive advertising with respect to the facility;
9. Has impersonated another licensee;
10. Has failed to exercise true regard for the safety, health, and life of the resident;
11. Has permitted unauthorized or illegal disclosure of information relating to a resident or the resident's records;
12. Has discriminated in respect to residents or staff with regard to race, religion, color, age, sex, creed, marital status, disability, status with regard to public assistance, or national origin;
13. Has been convicted of an offense having a direct bearing on the applicant or licensee's ability to serve the public as a nursing home administrator or, following conviction of any offense, has been determined by the board to be insufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1;
14. Has engaged in sexual harassment, made sexual advances toward, or engaged in sexual contact with any nursing home resident, or engaged in sexual harassment of any nursing home employee, student, trainee, volunteer, consultant, or visitor;
15. Has used the licensee's professional status, title, position, or relationship as a nursing home administrator or licensee to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, visitor, employee, or any person served by or doing business with a nursing home;

16. Has made a false statement or provided false or misleading information to the board, failed to submit reports as required by the board, failed to cooperate with an investigation of the board, or violated an order of the board;
17. Has failed to report a reprimand, restriction, limitation, condition, revocation, suspension, surrender, or other disciplinary action against the person's license as a nursing home administrator in another jurisdiction, has failed to report the existence of a complaint or other charges against the person's nursing home administrator license in another jurisdiction, or has been denied a license as a nursing home administrator by any other jurisdiction;
18. Has abused or is dependent on alcohol, legend drugs, or controlled substances, and the abuse or dependency affects the performance of the licensee's duties;
19. Has forged prescriptions or made drugs available to self, friends, or family members; or
20. Has failed to complete continuing education requirements.

History: Amended effective February 1, 1993; December 1, 1998; December 1, 2002; November 1, 2005; [January 1, 2017](#).

General Authority: NDCC 43-34-03, 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-03.1, 43-34-09, 43-34-10, 43-34-11, 43-34-12

55-02-01-18. Complaint procedures.

1. Upon filing of a written and signed complaint alleging a licensee engaged in conduct identified as grounds for disciplinary action under section 55-02-01-17, the board shall notify the licensee of the complaint and require a written response from the licensee. The board may initiate a complaint on its own motion upon learning of conduct identified by the board as grounds for disciplinary action under section 55-02-01-17, and shall notify the licensee of the complaint and require a written response from the licensee.
2. ~~The~~After notifying the licensee of the complaint and considering the licensee's response or lack of response, the board shall determine if there is a reasonable basis to believe the licensee engaged in conduct identified as grounds for disciplinary action under section 55-02-01-17. If the board determines there is not a reasonable basis to believe, the board will notify the complainant and the licensee. If the board determines there is a reasonable basis to believe, the board will proceed with a disciplinary action in accordance with North Dakota Century Code chapter 28-32.
3. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.

History: Amended effective February 1, 1993; December 1, 1998; December 1, 2002; [January 1, 2017](#).

General Authority: NDCC 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-03.1, 43-34-04, 43-34-09, 43-34-10, 43-34-11, 43-34-12

55-02-01-21. Inactive license status.

A nursing home administrator whose license has not expired or been revoked or suspended may request inactive license status for no more than ~~five~~three consecutive years. While in inactive license status, the administrator must submit a renewal form and a license fee annually but the continuing education requirement as set forth in section 55-02-01-12 need not be met. ~~A license may not be issued during the inactive license status period.~~ A nursing home administrator must obtain twenty hours of continuing education hours prior to reactivating his or her license.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; [January 1, 2017](#).

General Authority: NDCC 43-34-03, 43-34-04, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-05, 43-34-09, 43-34-10

TITLE 67
PUBLIC INSTRUCTION, SUPERINTENDENT OF

JANUARY 2017

CHAPTER 67-19-01 ACCREDITATION: PROCEDURES, STANDARDS, AND CRITERIA

Section

67-19-01-01	Definitions [Repealed]
67-19-01-02	Accreditation Status [Repealed]
67-19-01-03	Loss of Accreditation Status - Penalties [Repealed]
67-19-01-04	Nonclassified [Repealed]
67-19-01-05	Identification of Accreditation Status [Repealed]
67-19-01-06	Classification by School Grade Description and Authority
67-19-01-07	Enrollment Categories [Repealed]
67-19-01-08	Qualifications and Time Assignments for Administrators, Counselors, and Library Media Specialists [Repealed]
67-19-01-09	Types of Standards and Criteria - Penalties [Repealed]
67-19-01-10	Review Cycle [Repealed]
67-19-01-11	Appeals Procedure [Repealed]
67-19-01-12	Alternative Formats and Procedures [Repealed]
67-19-01-13	Calculation Tables for Secondary, Middle Level, and Junior High Schools [Repealed]
67-19-01-14	Calculation Tables for Elementary Schools [Repealed]
67-19-01-15	Education Improvement Process [Repealed]
67-19-01-16	Administration - Superintendent Qualifications and Time Assignments [Repealed]
67-19-01-17	Qualifications of an Administrative Assistant or Assistant Superintendent [Repealed]
67-19-01-18	Administration - Secondary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-19	Administration - Middle Level and Junior High School Principal and Assistant Principal - Qualifications and Time Assignments [Repealed]
67-19-01-20	Administration - Elementary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-21	Administration - Shared Elementary School Principal - Elementary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-22	Administration - Assistant Elementary School Principal - Elementary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-23	Instructional Personnel - Curriculum or Instructional Area Director [Repealed]
67-19-01-24	Instructional Personnel - Secondary School Teacher Qualifications [Repealed]
67-19-01-25	Instructional Personnel - Secondary School Teacher Qualifications - Specific Subject Area Preparation [Repealed]
67-19-01-26	Instructional Personnel - Middle Level or Junior High School Teacher Qualifications - General Preparation [Repealed]
67-19-01-27	Instructional Personnel - Middle Level or Junior High School Teacher Qualifications - Specific Subject Area Preparation [Repealed]

67-19-01-28	Instructional Personnel - Elementary School Teacher Qualifications - General Preparation [Repealed]
67-19-01-29	Instructional Personnel - Elementary School Teacher Qualifications - Specific Subject Preparation [Repealed]
67-19-01-29.1	Instructional Personnel - Specialized Credential Preparation
67-19-01-30	Professional Development Plan [Repealed]
67-19-01-31	Written Curriculum Plan for Kindergarten Through Grade Twelve [Repealed]
67-19-01-32	Instructional Program - Enrollments in Grades Nine Through Twelve [Repealed]
67-19-01-33	Middle Level or Junior High School - Enrollment in Grade Nine [Repealed]
67-19-01-34	Instructional Program - Enrollments in Grades Seven and Eight [Repealed]
67-19-01-35	Instructional Program - Enrollments in Prekindergarten Through Grade Six [Repealed]
67-19-01-36	Class Size [Repealed]
67-19-01-37	Teacher Preparation Time - Prekindergarten Through Grade Twelve [Repealed]
67-19-01-38	Student Evaluation [Repealed]
67-19-01-39	Pupil Personnel Services [Repealed]
67-19-01-40	Counseling and Guidance Services - Prekindergarten Through Grade Six [Repealed]
67-19-01-40.1	Counseling and Guidance Services - Grades Seven Through Twelve for the 2009-10 School Year [Repealed]
67-19-01-40.2	Counseling and Guidance Services - Grades Seven Through Twelve after After the 2009-10 school year School Year [Repealed]
67-19-01-41	Library Media Services [Repealed]
67-19-01-42	School Policies - Handbooks [Repealed]
67-19-01-43	Driver's Education Program - Administrative Requirements [Repealed]
67-19-01-44	Approval of Public Schools - Review Process - Adoption of Approval and Accreditation Process

67-19-01-01. Definitions.

Repealed effective October 1, 2016.

~~As used in this chapter:~~

~~1. "Accredited warned status" means the status of a school that is cited on:~~

~~a. A required criterion;~~

~~b. An accrual of less than eighty-five percent of the total points assigned to the point-value standards and criteria; or~~

~~c. An accrual of less than fifty percent of the point values assigned in any one section.~~

~~2. "Not accredited status" means a school does not meet the qualifying standards and criteria by enrollment categories.~~

~~3. "Unit of credit" means a minimum of one hundred twenty clock-hours of instruction for all courses except the natural sciences and career and technical courses which require one hundred fifty clock-hours of instruction.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-02. Accreditation status.

Repealed effective October 1, 2016.

~~A school earning the status of accredited must:~~

- ~~1. Meet all the required standards and criteria;~~
- ~~2. Accrue at least eighty-five percent of the total point values assigned to the point-value standards and criteria that apply to the school; and~~
- ~~3. Accrue at least fifty percent of the point values assigned under sections 67-19-01-13 and 67-19-01-14.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-04~~

67-19-01-03. Loss of accreditation status - Penalties.

~~Repealed effective October 1, 2016.~~

- ~~1. A school failing to meet the required and minimum point-value standards and criteria in section 67-19-01-02 will be classified accredited warned.~~
- ~~2. A school must remove the accredited warned status from the previous year or the school will be classified not accredited.~~
- ~~3. A school that is not accredited is not entitled to the amounts resulting from applying the weighting factor as provided by the foundation aid payment formula.~~
- ~~4. Penalties for loss of accreditation status are provided by statute in North Dakota Century Code sections 15.1-27-08 and 15.1-27-09.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11, 15.1-27-06, 15.1-27-07, 15.1-27-08, 15.1-27-09~~

67-19-01-04. Nonclassified.

~~Repealed effective October 1, 2016.~~

- ~~A school not seeking accreditation will be declared nonclassified.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-05. Identification of accreditation status.

~~Repealed effective October 1, 2016.~~

- ~~The accreditation status of all schools must be provided in the educational directory and listed on the annual accreditation reports issued to the schools.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-06. Classification by school grade description and authority.

1. A school must be classified as a secondary school, middle level or junior high school, or an elementary school dependent upon the grade organization in that school. ~~Accreditation standards and criteria must be applied according to the declared organization of a school. A~~

school district retains the discretion to organize grades in the configurations that are most appropriate for that district.

2. Configurations for school organizations are:
 - a. A secondary school may include any consecutive combination of grades from seven through twelve.
 - b. A middle level or junior high school may include any consecutive combination of grades from five through nine.
 - c. An elementary school may include any consecutive combination of grades from prekindergarten through grade eight.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010; [October 1, 2016](#).

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-07. Enrollment categories.

[Repealed effective October 1, 2016.](#)

- ~~1. For organizations listed in subsection 2 of section 67-19-01-06, the enrollment categories are as follows:
 - ~~a. Secondary:
 - ~~(1) One hundred or fewer;~~
 - ~~(2) One hundred one through two hundred fifty; and~~
 - ~~(3) Two hundred fifty one or more.~~~~
 - ~~b. Middle level or junior high school:
 - ~~(1) One hundred or fewer;~~
 - ~~(2) One hundred one through two hundred fifty; and~~
 - ~~(3) Two hundred fifty one or more.~~~~
 - ~~c. Elementary:
 - ~~(1) Twenty four or fewer;~~
 - ~~(2) Twenty five through one hundred;~~
 - ~~(3) One hundred one through two hundred fifty; and~~
 - ~~(4) Two hundred fifty one or more.~~~~~~
- ~~2. A school may request a waiver of an accreditation standard for the following school year as provided in North Dakota Century Code section 15.1-06-08.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-08. Qualifications and time assignments for administrators, counselors, and library media specialists.

Repealed effective October 1, 2016.

~~The qualifications and time assignments for administrators, counselors, and library media specialists must be based upon the total number of students being served. Specific sections of the accreditation standards that address this are sections 67-19-01-16, 67-19-01-18, 67-19-01-19, 67-19-01-20, 67-19-01-21, 67-19-01-22, 67-19-01-40, and 67-19-01-41.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-10. Review cycle.

Repealed effective October 1, 2016.

- ~~1. Before September fifteenth of each year, each school must submit required accreditation information;~~
- ~~2. A school will be reviewed on all standards and criteria in section 67-19-01-13 or 67-19-01-14 annually;~~
- ~~3. The accreditation status as provided in section 67-19-01-02 will be reported to each school by March thirty-first of each school year; and~~
- ~~4. Corrections must be received by the department no later than June thirtieth or the reported school status will be continued.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-13. Calculation tables for secondary, middle level, or junior high schools.

Repealed effective October 1, 2016.

- ~~1. The calculation tables outline the standards for secondary schools and middle level and junior high schools. The tables identify the required standards and the point value standards and criteria that apply to the school.~~
- ~~2. The accreditation standards and criteria that are identified by the letter R are those which are required of all schools.~~
- ~~3. The point value standards and criteria are designed to provide some flexibility to schools.~~
- ~~4. A school must accrue at least eighty-five percent of the overall points that apply to the school and accrue at least fifty percent of the points assigned to each section.~~
- ~~5. Schools accrue points for the standards that apply directly to them. For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard if the person holding the position is qualified for the position.~~
- ~~6. Calculation tables for secondary, middle level, or junior high are:~~

Points

a. Education improvement process	R
b. Administration:	
(1) Superintendent:	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(2) Assistant superintendent qualifications	2
(Accrual of 2 points only if employed and qualified)	
(3) Principal:	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(4) Assistant principal:	
(a) Qualifications	2
(Accrual of 2 points only if employed and qualified)	
(b) Time assignment	2
(Accrual of 2 points only if employed and qualified)	
(5) Special education director qualifications:	2
(Accrual of 2 points only if employed and qualified)	
e. Instructional personnel:	
(1) Teacher preparation	R
(2) Professional development plan	R
d. Instructional program:	
(1) Written curriculum plan	R
(2) Curriculum:	
(a) Two-year course offerings (high school only)	R
(b) Curriculum subjects and time allotment (middle level or junior high only)	R
(3) Class size:	
Maximum accrual for enrollment category:	
0-100	10
101-250	15
251+	20
(Loss of 1 point per teacher)	
e. Student evaluation plan	R
f. (Effective for the 2009-10 school year) Pupil personnel services:	
(1) Pupil personnel services plan	R
(2) Coordinator	R

(3) Counseling and guidance services:	
(a) Counselor qualifications	3
(b) Counselor time assignment	3
(Accrual of 3 points only if qualified)	
g. (Effective after the 2009-10 school year) Pupil personnel services:	
(1) Pupil personnel services plan	R
(2) Coordinator	R
(3) Counseling and guidance services:	
(a) Counselor qualifications	R
(b) Counselor time assignment	3
(Accrual of 3 points only if qualified)	
(4) Career advisor qualifications	R
When counselor and guidance services are provided by a career advisor for grades seven through twelve, a career advisor can satisfy up to one-third of the counseling requirement.	
h. Library media services:	
(1) Library media services plan	R
(2) Librarian:	
(a) Qualifications	3
(b) Time assignment	3
(Accrual of 3 points only if qualified)	
i. School policies – handbooks:	
(1) Teacher handbook	2
(2) Student and parent handbook	2

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-06-20

67-19-01-14. Calculation tables for elementary schools.

Repealed effective October 1, 2016.

- 1. — The following calculation tables outline the standards for elementary schools. The table identifies the required standards and the point-value standards and criteria that apply to the school.
- 2. — The accreditation standards and criteria which are identified by the letter R are those which are required of all schools within the timelines established.
- 3. — The point-value standards and criteria are designed to provide some flexibility to schools.

- ~~4. A school must accrue at least eighty-five percent of the overall points that apply to the school and accrue at least fifty percent of the points assigned to each section.~~
- ~~5. Schools must accrue points for the standards that apply directly to them. For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard if the person holding the position is qualified for the position.~~
- ~~6. Calculation tables for elementary schools are:~~

	Points
a. Education improvement process	R
b. Administration:	
(1) Superintendent (if employed):	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(2) Assistant superintendent qualifications	2
(Accrual of 2 points only if employed and qualified)	
(3) Principal:	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(4) Assistant principal:	
(a) Qualifications	2
(Accrual of 2 points only if employed and qualified)	
(b) Time assignment	2
(Accrual of 2 points only if employed and qualified)	
(5) Special education director qualifications:	2
(Accrual of 2 points only if employed and qualified)	
c. Instructional personnel:	
(1) Teacher preparation	R
(2) Professional development plan	R
d. Instructional program:	
(1) Written curriculum plan	R
(2) Curriculum subjects and time allotment	R
(3) Class size:	
Maximum accrual for enrollment category:	
0-100	10
101-250	15
251+	20

	(Loss of 1 point per teacher)	
e.	Student evaluation:	
	(1) Student evaluation plan	R
	(2) Readiness—kindergarten and first grade	2
f.	(Effective for the 2009–10 school year) Pupil personnel services:	
	(1) Pupil personnel services plan	R
	(2) Coordinator	R
	(3) Counseling and guidance services:	
	(a) Counselor qualifications	3
	(b) Counselor time assignment	3
	(Accrual of 3 points only if qualified)	
g.	(Effective after the 2009–10 school year) Pupil personnel services:	
	(1) Pupil personnel services plan	R
	(2) Coordinator	R
	(3) Counseling and guidance services:	
	(a) Counselor qualifications	R
	(b) Counselor time assignment	3
	(Accrual of 3 points only if qualified)	
	(4) Career advisor qualifications	R
	When counselor and guidance services are provided by a career advisor for grades seven and eight, a career advisor can satisfy up to one-third of the counseling requirement.	
h.	Library media services:	
	(1) Library media services plan	R
	(2) Librarian:	
	(a) Qualifications	3
	(b) Time assignment	3
	(Accrual of 3 points only if qualified)	
i.	(Effective after the 2009–10 school year)	
	Student performance strategist (kindergarten through grade three)	
	(1) Qualifications	R
	(2) Time—One full-time equivalent for each four hundred students	3
j.	School policies—handbooks:	
	(1) Teacher handbook	2
	(2) Student and parent handbook	2

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

~~Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-07-32~~

67-19-01-15. Education improvement process.

~~Repealed effective October 1, 2016.~~

~~All schools must implement an education improvement process that meets the needs of all students in the school. Schools may choose to follow the state education improvement process or an alternative process that at least meets the requirements of the state process. Schools that follow the state education improvement process must establish their plans as a result of assessments and must describe how the plan will lead to improved student achievement at the school as follows:~~

- ~~1. The continuous cycle of education improvement is conducted over a five-year period with reports submitted to the department annually by June thirtieth.~~
- ~~2. The five-year continuous cycle includes peer visitation and consultation.~~
- ~~3. The cycle results in three reports from peer reviewers external to the school: an initial team chair report, a team visitation report, and a final team chair report. The continuous cycle results in the following:
 - ~~a. An initial team chair report submitted by the external team chair during the first year;~~
 - ~~b. The action plan for education improvement submitted by the school's education improvement committee;~~
 - ~~c. An annual report of the education improvement activities submitted by the school's education improvement committee;~~
 - ~~d. An external team report provided by the external team chair following the team visit during the second or third year of the continuous cycle; and~~
 - ~~e. A final team chair report submitted by the external team chair at the end of the cycle.~~~~
- ~~4. The annual accreditation review is based on the school maintaining progress in its continuous cycle by submitting the required reports.~~

~~History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~General Authority: NDCC 15.1-02-11~~

~~Law Implemented: NDCC 15.1-02-11~~

67-19-01-16. Administration - Superintendent qualifications and time assignments.

~~Repealed effective October 1, 2016.~~

- ~~1. Qualifications:
 - ~~a. A public high school district, parochial or private high school must employ a superintendent who has a superintendent's credential, AD01 or ADP2.~~
 - ~~b. A graded elementary district, parochial or private elementary school may employ a superintendent. If so employed, the superintendent must have a superintendent's credential, AD01 or ADP2.~~~~
- ~~2. Time assignments for superintendents based on school enrollment for all grades.
 - ~~a. Enrollment two hundred fifty or fewer. A superintendent must devote a minimum of one-half of the instructional day to functions of the superintendency (180 minutes per day or 900 minutes per week).~~~~

- ~~b. Enrollment two hundred fifty one through four hundred. A superintendent must devote a minimum of two thirds of the instructional day to functions of the superintendency (240 minutes per day or 1200 minutes per week).~~
- ~~c. Enrollment four hundred one or more. A superintendent must devote full time to functions of the superintendency (360 minutes per day or 1800 minutes per week), of which a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~
- ~~3. Two or more school districts or a consortium of schools may share a superintendent if:~~
 - ~~a. The superintendent is assigned to full-time administration and supervision; and~~
 - ~~b. The superintendent has a superintendent's credential, AD01 or ADP2.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-17. Qualifications of an assistant superintendent.

Repealed effective October 1, 2016.

~~An assistant superintendent must have a superintendent's credential, AD01 or ADP2.~~

History: Effective January 1, 2000; amended July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 115.1-02-11

67-19-01-18. Administration - Secondary school principal qualifications and time assignments.

Repealed effective October 1, 2016.

- ~~1. A secondary school principal administering a school with enrollments as described in section 67-19-01-06 must have the following qualifications within the person's enrollment classification:~~
 - ~~a. Enrollment one hundred or fewer. A secondary school principal must have a secondary principal's credential, SP01, SP02, SP03, or SPP2. An individual holding an SP03 credential may continue to renew the credential only while the individual serves in the same school. The SP03 is no longer issued as an initial credential.~~
 - ~~b. Enrollment one hundred one through two hundred fifty. A secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.~~
 - ~~c. Enrollment two hundred fifty one or more. A secondary school principal must have a secondary principal's credential, SP01 or SPP2.~~
- ~~2. The time assignment for the secondary school principal within the person's enrollment classification must be as follows:-~~
 - ~~a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship,~~

~~of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

~~3. Time assignments for shared secondary school principal. The time assignments for a secondary principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:~~

~~a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~4. An assistant secondary school principal administering a school with enrollments as described in section 67-19-01-06 must meet the following qualifications and time:~~

~~a. An assistant secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.~~

~~b. The time assignment for the assistant secondary school principal within the person's enrollment classification must be as follows:-~~

~~(1) Enrollment five hundred one through seven hundred fifty. A secondary school assistant principal must devote a minimum of 180 minutes per day or 900 minutes per week to the assistant principalship.~~

~~(2) Enrollment seven hundred fifty-one or more. A secondary school assistant principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the assistant principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-19. Administration - Middle level or junior high school principal and assistant principal - Qualifications and time assignments.

Repealed effective October 1, 2016.

~~1. Qualifications by enrollment categories are as follows:-~~

- ~~a. Enrollment one hundred or fewer. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, SP01, SP02, or SPP2. An individual holding an EP03 or SP03 may continue to renew the credential only while the individual serves in the same school. The EP03 or SP03 is no longer issued as an initial credential.~~
- ~~b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, EP03, SP01, SP02, SP03, or SPP2.~~
- ~~c. Enrollment two hundred fifty one or more. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EPP2, SP01, or SPP2.~~
- ~~2. Time assignments by enrollment categories are as follows:~~
 - ~~a. Enrollment one hundred or fewer. A middle level or junior high school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~c. Enrollment two hundred fifty one or more. A middle level or junior high school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~
- ~~3. An assistant middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, SP01, SP02, or SPP2.~~
- ~~4. Time assignments by enrollment categories are as follows:~~
 - ~~a. Enrollment five hundred through seven hundred fifty. A middle level or junior high school assistant principal must devote a minimum of 180 minutes per day or 900 minutes per week to the assistant principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~b. Enrollment seven hundred fifty one or more. A middle level or junior high school assistant principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the assistant principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-20. Administration - Elementary school principal qualifications and time assignments.

Repealed effective October 1, 2016.

- ~~1. Qualifications by enrollment categories are as follows:
 - ~~a. Enrollment twenty four or fewer. An elementary school principal must have a North Dakota educator's professional license with a major, minor, or an endorsement in elementary education.~~
 - ~~b. Enrollment twenty five through one hundred. An elementary school principal must have an elementary principal's credential, EP01, EP02, EP03, or EPP2. An individual holding an EP03 may continue to renew the credential only while the individual serves in the same school. The EP03 is no longer issued as an initial credential.~~
 - ~~c. Enrollment one hundred one through two hundred fifty. An elementary school principal must have an elementary principal's credential, EP01, EP02, or EPP2.~~
 - ~~d. Enrollment two hundred fifty one or more. An elementary school principal must have an elementary principal's credential, EP01 or EPP2.~~~~
- ~~2. The time assignment for the elementary school principal within the person's enrollment classification must be as follows:
 - ~~a. Enrollment twenty four or fewer. Time should be provided for the performance of administrative duties.~~
 - ~~b. Enrollment twenty five through one hundred. An elementary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~c. Enrollment one hundred one through two hundred fifty. An elementary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~d. Enrollment two hundred fifty one or more. An elementary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-21. Administration - Shared elementary school principal - Elementary school principal qualifications and time assignments.

Repealed effective October 1, 2016.

- ~~The time assignments for the elementary school principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:~~
- ~~1. **Enrollment twenty four or fewer.** Time should be provided for the performance of administrative duties.~~
 - ~~2. **Enrollment twenty five through one hundred.** An elementary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at~~

~~least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~3. **Enrollment one hundred one through two hundred fifty.** An elementary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~4. **Enrollment two hundred fifty-one or more.** An elementary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-22. Administration - Assistant elementary school principal - Elementary school principal qualifications and time assignments.

~~Repealed effective October 1, 2016.~~

~~1. An assistant elementary school principal must have an elementary principal's credential at least applicable to the next lower enrollment category.~~

~~2. Time assignments are as follows:~~

~~a. If a principal serves in more than one building or has another assignment other than teaching, there must be an assistant principal assigned in that building. Time devoted to the functions of the assistant principal is not regulated but must be commensurate with the assigned duties and documented to correspond to assigned duties.~~

~~b. For a school with an enrollment of six hundred or more, an elementary school assistant principal must devote a minimum of 180 minutes per day or 900 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-30. Professional development plan.

~~Repealed effective October 1, 2016.~~

~~A written school district plan must be adopted which describes a program for professional development. The plan must include a description of the procedures, the activities, and the timeline for completion of activities. The plan must be reviewed at least once every five years and submitted to the department each time it is amended.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-32. Instructional program - Enrollments in grades nine through twelve.

~~Repealed effective October 1, 2016.~~

- ~~1. A curriculum for all students in grades nine through twelve must assure each student access to a minimum of five units of credit per year.~~
- ~~2. The minimum units of credit listed for each course are set out in North Dakota Century Code section 15.1-21-02.~~
- ~~3. A secondary school must provide additional units of credit in each school over a two-year period. The number of units is determined by the enrollment categories as follows:

 - ~~a. Eighty or fewer seven units from two course areas;~~
 - ~~b. Eighty one through one hundred fifty nine units from two course areas;~~
 - ~~c. One hundred fifty one through three hundred fifty eleven units from three course areas; and~~
 - ~~d. Three hundred fifty one or more thirteen units from four course areas.~~~~
- ~~4. Schools must count for purposes of the minimum two-year course offering those courses in which students are enrolled which are provided through cooperative arrangements between or among schools and approved by the department.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-21-02

67-19-01-33. Middle level or junior high school - Enrollment in grade nine.

Repealed effective October 1, 2016.

~~If grade nine is included in the middle level or junior high school organizational unit, the curriculum for secondary school grades nine through twelve, under section 67-19-01-32, must be provided for grade nine students.~~

History: Effective January 1, 2000.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-34. Instructional program - Enrollments in grades seven and eight.

Repealed effective October 1, 2016.

- ~~1. Grades seven and eight required courses. A student must be enrolled for a minimum time of instruction per week in the following areas:

 - ~~a. English language arts two hundred minutes.~~
 - ~~b. Mathematics two hundred minutes.~~
 - ~~c. Science two hundred minutes.~~
 - ~~d. Social studies two hundred minutes (Social studies in grade eight must include North Dakota studies. The North Dakota studies course code must be used when reporting on the MIS03.).~~
 - ~~e. Physical education eighty minutes.~~
 - ~~f. Health fifty minutes.~~~~

- ~~2. Grades seven and eight additional courses:~~
 - ~~a. Music must be available to all students:~~
 - ~~(1) For a minimum of one hundred minutes per week in grade seven;~~
 - ~~(2) For a minimum of one hundred minutes per week in grade eight; or~~
 - ~~(3) For a minimum of fifty minutes per week in grade seven and for a minimum of fifty minutes per week in grade eight.~~
 - ~~b. A minimum of two hundred minutes per week of instruction in courses from one or a combination of the following must be available:~~
 - ~~(1) Art;~~
 - ~~(2) Agribusiness;~~
 - ~~(3) Business education;~~
 - ~~(4) Computer education;~~
 - ~~(5) Modern languages;~~
 - ~~(6) Family and consumer sciences;~~
 - ~~(7) Technology education; and~~
 - ~~(8) Other additional courses as approved by the department.~~
 - ~~c. A middle level or junior high school student must not be assigned to a study hall for more than one period a day.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-21-01

67-19-01-35. Instructional program - Enrollments in prekindergarten through grade six.

Repealed effective October 1, 2016.

~~Specific requirements regarding the length of the minimum instructional time per week for all subject areas are:~~

1. Prekindergarten and kindergarten (two and three quarters hours per day or 825 minutes per week, equivalent);			
2. Primary (grades one through three)			
Language arts	650	650	650
Mathematics	200	200	200
Social studies	100	100	100
Science	60	60	60
Health	40	40	40
Music	90	90	90

Physical education	90	90	90
Art	45	45	45
Unallocated time	375	375	375

Unallocated time may be used for:

- ~~a. Planning and guided learning;~~
- ~~b. Initiating or expanding a subject area;~~
- ~~c. Providing elective offerings; and~~
- ~~d. Providing pupil personnel services.~~

3. Intermediate (grades four through six)	4th	5th	6th
Language arts	460	420	420
Mathematics	200	200	200
Social studies (Social studies in grade four must include North Dakota studies. The North Dakota studies course code must be used when reporting on the MIS03.)	200	200	200
Science	160	200	200
Health	80	80	80
Music	90	90	90
Physical education	90	90	90
Art	45	45	45
Unallocated time	325	325	325

~~Unallocated time may be used for:~~

- ~~a. Planning and guided learning;~~
- ~~b. Initiating or expanding a subject area;~~
- ~~c. Providing elective offerings; and~~
- ~~d. Providing pupil personnel services.~~

~~4. Thirty minutes of supervised recess may be counted as part of the ninety minutes of physical education for grades one through three.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCG 15.1-02-11

Law Implemented: NDCG 15.1-02-11, 15.1-21-01

67-19-01-36. Class size.

Repealed effective October 1, 2016.

- ~~1. Secondary and middle level or junior high school:~~

- ~~a. Class size is recommended to be twenty-five students but may not exceed thirty students.~~
 - ~~b. A school unit is allowed three percent of the total number of classes taught to exceed thirty students to a maximum of thirty-four students per class without citation.~~
 - ~~c. Science and career and technical education classes must not exceed the capacity of the learning stations provided.~~
 - ~~d. Instrumental and vocal music classes are exempt from the class-size standard.~~
- ~~2. Elementary school:~~
- ~~a. Classroom enrollment, one grade level per teacher:

 - ~~(1) Prekindergarten through grade three is recommended to be twenty students but may not exceed twenty-five; and~~
 - ~~(2) Grades four through eight is recommended to be twenty-five students but may not exceed thirty.~~~~
 - ~~b. Maximum classroom enrollment, two grade levels per teacher:

 - ~~(1) Prekindergarten through grade three, twenty students; and~~
 - ~~(2) Grades four through eight, twenty-five students.~~~~
 - ~~c. Maximum classroom enrollment, three grade levels per teacher, prekindergarten through grade eight, is fifteen students.~~
 - ~~d. Maximum classroom enrollment, four grade levels per teacher, prekindergarten through grade eight, is ten students.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-37. Teacher preparation time - Prekindergarten through grade twelve.

Repealed effective October 1, 2016.

~~A teacher's schedule must include preparation time during the teacher's working day.~~

~~**History:** Effective January 1, 2000; amended effective January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-38. Student evaluation.

Repealed effective October 1, 2016.

- ~~1. A school district shall develop a plan for use of standardized test scores and other available data to enable instructional personnel and supervisors to plan curriculum, to improve the instructional program, to enhance student performance, to provide for special needs of students, and to report student progress to parents and the community. The plan must be reviewed at least once every five years and be kept on file for onsite review.~~
- ~~2. Kindergarten or grade one. A standardized readiness test must be administered in either kindergarten or grade one, whichever is the initial point of formal education. The most recent~~

~~copyright date of the standardized readiness test administered may not be more than ten years prior to the administration of the test.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-39. Pupil personnel services.

~~Repealed effective October 1, 2016.~~

- ~~1. Each district must provide a pupil personnel services plan, which ensures students' needs are being met in counseling and guidance services, career planning, social and psychological services, and health services.~~
- ~~2. A district must have a written description of the pupil personnel services plan which is developed and reviewed periodically in cooperation with the staff members from counseling and guidance, social and psychological, and health services. The written plan must be on file with the pupil personnel services coordinator, must be reviewed at least once every five years, and kept on file for onsite review. In school districts with enrollments of one through twenty-four students, a copy of the written plan must be on file with the department of public instruction. The written plan must include the scope of services, personnel, and resources; schedule and time assignments of services that will be provided; and health and immunization records.~~
- ~~3. The pupil personnel services must be coordinated by a credentialed school counselor, superintendent, principal, or special education unit director. The classroom teacher may coordinate the services in elementary school districts with enrollments of one through twenty-four students.~~

~~**History:** Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15-20.1-24, 15-20.1-25, 15.1-02-11, 15.1-06-20~~

67-19-01-40. Counseling and guidance services - Prekindergarten through grade six.

~~Repealed effective October 1, 2016.~~

- ~~1. Counseling and guidance services provided to students in prekindergarten through grade six must be provided by credentialed counselors at the required time assignments.~~
- ~~2. a. Qualifications for school counseling and guidance personnel serving students in prekindergarten through grade six are based on the total number of students in the schools served:
 - ~~(1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written plan as provided for in subsection 2 of section 67-19-01-39 must state what access the student has to counseling services by credentialed or licensed mental health professionals.~~
 - ~~(2) Enrollment of twenty five through two hundred fifty. A counselor must have a counselor designate credential or an approved written plan of study on file with the department of public instruction as provided for in subdivision b.~~
 - ~~(3) Enrollment of two hundred fifty one or more. A counselor must have a school counselor credential. Services may also be provided in accordance with North~~~~

~~Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.~~

- ~~b. If a school is unable to employ a credentialed counselor, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor. A written plan of study to become a credentialed counselor must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04 school counselor credentials.~~
- ~~3. The time assignment for counseling and guidance personnel serving students in prekindergarten through grade six based on the total number of students served:
 - ~~a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.~~
 - ~~b. A school district with enrollment of one through twenty-four must submit annually a copy of its written plan as described in subsection 2 of section 67-19-01-39 to the department of public instruction, which includes classroom guidance activities based on the same time assignment.~~
 - ~~c. In an elementary school, a qualified elementary school counselor or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written plan as described in subsection 2 of section 67-19-01-39.~~~~

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-06-19

67-19-01-40.1. Counseling and guidance services - Grades seven through twelve for the 2009-10 school year.

Repealed effective October 1, 2016.

~~During the 2009-10 school year, all schools must provide counseling and guidance services to students in grades seven through twelve as follows:~~

- ~~1. Counseling and guidance services must be provided by credentialed counselors.~~
- ~~2. a. Qualifications for school counseling and guidance personnel serving students in grades seven through twelve are based on the total number of students in the schools served:
 - ~~(1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written plan as provided for in subsection 2 of section 67-19-01-39 must state what access the student has to counseling services by credentialed or licensed mental health professionals.~~
 - ~~(2) Enrollment of twenty-five through two hundred fifty. A counselor must have a counselor designate credential or an approved written plan of study on file with the department of public instruction as provided for in subdivision b.~~
 - ~~(3) Enrollment of two hundred fifty-one or more. A counselor must have a school counselor credential. Services may also be provided in accordance with North~~~~

~~Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.~~

- ~~b. If a school is unable to employ a credentialed counselor, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor. A written plan of study to become a credentialed counselor must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04.~~
- ~~3. The time assignment for counseling and guidance personnel serving students in grades seven through twelve is based on the total number of students served:
 - ~~a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.~~
 - ~~b. A school district with enrollment of one through twenty-four must annually submit a copy of its written plan to the department of public instruction, including classroom guidance activities based on the same time assignment, as described in subsection 2 of section 67-19-01-39.~~
 - ~~c. In an elementary school, a qualified elementary school counselor or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written plan as described in subsection 2 of section 67-19-01-39.~~~~

History: Effective January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-40.2. Counseling and guidance services - Grades seven through twelve after the 2009-10 school year.

Repealed effective October 1, 2016.

- ~~After the 2009-10 school year, all schools must provide counseling and guidance services to students in grades seven through twelve.~~
- ~~1. Each school must have a minimum of one full-time equivalent counselor available for every three hundred students in grades seven through twelve. Proportionate time allowances may be calculated for fractions thereof.~~
- ~~2. All counseling and guidance services must be provided by credentialed counselors, except a school may fulfill up to one-third of the counseling staffing level requirement with a qualified career advisor working under the direction of qualified counseling staff.~~

History: Effective January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-06-20

67-19-01-41. Library media services.

Repealed effective October 1, 2016.

- ~~1. Each school must provide a library media services plan which ensures that students and staff are effective users of ideas and information.~~
- ~~2. A school must have a written description of the library media services plan, developed and reviewed periodically in cooperation with the library and instructional staff and maintained at the school district level, which includes scope of services, personnel, resources, and equipment, and schedule and time assignments of services that will be provided. The library media services written plan must be reviewed at least once every five years and remain on file for onsite review.~~
- ~~3. Qualifications for school library media personnel employed in a secondary, middle level or junior high, elementary, or centralized (prekindergarten through grade twelve) library:
 - ~~a. The qualifications for librarians are determined by the total number of students in the schools served:
 - ~~(1) Enrollment of one through twenty four. A librarian is not required; however, the library media services plan as provided in subsection 1 of section 67-19-01-41 must state what access students have to library materials and services.~~
 - ~~(2) Enrollment of twenty five through two hundred fifty. A librarian must be a licensed teacher and must have an LM03, LM02, LM01, or an approved plan of study librarian credential.~~
 - ~~(3) Enrollment of two hundred fifty one or more. A librarian must be a licensed teacher and must have an LM01 or LM02 library media credential or an approved plan of study.~~~~
 - ~~b. If a school is unable to employ a credentialed librarian, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the librarian. A written library plan of study to become a credentialed librarian must be submitted to the department of public instruction and must be approved as described in section 67-11-04-04 school library media credentials.~~~~
- ~~4. The time assignment must be provided by a qualified librarian and is determined by the total number of students served.
 - ~~a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full time credentialed school librarian must be provided for each four hundred fifty students.~~
 - ~~b. A school with enrollment of one to twenty four must make library media materials and services available to all students as indicated in the district's library media services plan. The school must annually submit a copy of its written library media services plan as described in subsection 2 to the department of public instruction.~~
 - ~~c. In any school library with a full time librarian, library media aide time assignments may be used to fulfill time requirements in excess of one full time librarian.~~
 - ~~d. In an elementary school, a qualified elementary school librarian must provide at least fifty percent of the total library program time assignment for organization, curriculum, service, coordination, and supervision responsibilities. Library media aide time assignments may be used to meet the total library time assignments in excess of the fifty percent librarian serving in a prekindergarten through grade six or prekindergarten through grade eight library.~~~~

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-42. School policies - Handbooks.

Repealed effective October 1, 2016.

- ~~1. Each district must develop a teacher handbook and a student-parent handbook. The handbooks must be reviewed at least once every five years and kept on file for onsite review.~~
- ~~2. Handbooks, kindergarten through grade twelve:
 - ~~a. Teacher handbook. A school must provide to each teacher a current handbook containing the rules and regulations that pertain to the duties and responsibilities of the teacher. The handbook may include policies for the general operation of the school.~~
 - ~~b. A school must provide to each student a current student and parent handbook that includes the school mission or philosophy, goals, objectives, student rights and responsibilities, and policies on parent and student issues that include attendance, discipline, promotion and retention, and graduation requirements.~~~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-44. Approval of public schools - Review process - Adoption of approval and accreditation process.

1. To be certified as an approved public school, a school must participate and meet the requirements of a school improvement review process.
2. To meet approval requirements, the review process must be:
 - a. Designed to improve student achievement;
 - b. Designed as a continuous cycle of improvement; and
 - c. Approved by the superintendent of public instruction.
3.
 - a. The AdvancED Accreditation Policies and Procedures for AdvancED accreditation in effect on June 25, 2015, are adopted by reference.
 - b. Copies of these policies and procedures for accreditation may be obtained from:

North Dakota Department of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0440
<https://www.nd.gov/dpi>

History: Effective October 1, 2016.

General Authority: NDCC 15.1-02-04(1), 15.1-02-11

Law Implemented: NDCC 15.1-06-06(1)(d)

TITLE 69.5
RACING COMMISSION, NORTH DAKOTA

JANUARY 2017

CHAPTER 69.5-01-08

69.5-01-08-02. Totalizator system.

1. Each association shall install and operate during its meeting a totalizator system approved by the commission and such system must be tested prior to and during the meeting as required by the commission.
2. A licensee that is hosting pools shall use only a totalizator system approved by the commission.
3. A licensee hosting tournament style pools, including the tournament wager or 123racing Pick-n Wager may elect to calculate pools using its own software and servers suitable for this purpose rather than a licensed totalizator system only if all of the following conditions are met:
 - a. Wagers made into the tournament pool are not comingled with wagers placed through any other entity or any interstate or international combined wagering pools.
 - b. The licensee provides a daily report of all tournament wagering activity including such data as requested by the commission or as necessary to comply with statute or administrative rules. The daily reports must be delivered to the commission's independent auditor or other designated representative no later than 8:00 a.m. eastern time the day following the generation of the wagers in a manner and format designated by the commission.
 - c. The licensee establishes a real-time data feed with a totalizator company approved by the commission. The data feed must include the odds feed, stop betting, scheduled post time, and payoffs for any race comprising part of the tournament wager. The data feed may be provided via inter-tote system protocol, web service application program interface, or other method capable of providing the required data as approved by the commission. The licensee shall utilize a secure network for all data communications.
 - d. The licensee utilizes the stop betting data from the real-time data feed to automatically close wagering. The licensee's system also must be capable of automatically closing wagering at post time in the event of an interruption in the real-time data feed.
 - e. After close of wagering for a tournament or any race or races comprising the tournament, the licensee makes all such picks publicly available by immediately posting a listing of all selections by player in the tournament.
 - f. The licensee obtains all necessary authorizations to allow the commission, its independent auditor, or other designated representative to obtain pricing data files

directly from the host totalizator at a track holding a race which comprises part of the tournament wager. If there is a discrepancy between the pricing data of the track host totalizator and the licensee, the licensee shall work directly with the independent auditor to identify and reconcile the error in accordance with section 69.5-01-11-04.1.

g. The licensee provides any track holding a race which comprises part of the tournament wager with authorization to view reports from the commission's independent auditor or other designated representative providing the wagering data required in order to audit licensee payments to the track.

h. A totalizator company provides access to the commission, its independent auditor, or its designated representative to its facility, records, and any other information as required by the commission.

i. The licensee submits a tournament wagering operations plan to the commission for its review and approval. The operations plan must provide details on all operations specified in this section as well as any additional information requested by the commission. The plan must provide the following additional information and specifically address how the licensee's operations ensure the same level of integrity in the wagering process as required of licensed totalizators pursuant to sections 69.5-01-11-13 through 69.5-01-11-15 as applicable:

(1) Facility safety and security.

(2) Hardware operation and security.

(3) Software operation and security.

(4) Management procedures.

(5) Personnel requirements.

(6) Reporting and log requirements.

History: Effective July 1, 1989; amended effective April 1, 2016; January 1, 2017.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-04. Calculation and distribution of pools.

1. **General.** The only pari-mutuel wagering pools permitted are, those designated in the association of racing commissioners international model rules of racing version 6.0, rules ARCI-004-105 part I, A through X, and pari-mutuel plus, pick 1-2-3, pick 1-2-3-4-5, 123racing Pick-n Wager®, ~~and Tote-X® win,~~ and tournament wager. In each pool there must be a separate and independent calculation and distribution. From each pool there must be deducted by each association or licensee the commissions as provided by state law. The remainder of the moneys in the pool must be distributed as payoff to ticketholders as set out therein.

2. **Pari-mutuel plus.**

a. The pari-mutuel plus pool requires selection of the order of any designated number of finishers, in their exact positions, in designated contests. The service provider must obtain written approval from the commission concerning the scheduling of the pari-mutuel plus contests and designate the percentage of the amount of carryover. The pari-mutuel plus pool consists of a pool and jackpot carryover and must have predetermined percentages set aside for the pool designated to winners who selected the designated

number of finishers. The pool will be distributed to the winners who selected the finishers, in their exact positions, and they will then be eligible for the random drawing of the randomly generated numbers assigned to the wager's ticket to be drawn for the awarding of the jackpot pool. To be awarded the jackpot pool, the winner of the pool must have the matching randomly generated number on the person's ticket that is drawn randomly from the group of designated numbers. Any changes to the approved pari-mutuel plus format require prior approval from the commission.

- b. Unless otherwise stated, the major share of the net pari-mutuel plus pool shall be distributed as a single price pool to those who selected the designated number of finishers, in exact positions, based upon the official order of finish.
- c. The pari-mutuel plus pool shall be apportioned with no minor pool and carryover by choosing the designated number of horses in exact order of finish. The service provider must make a written request to the commission for approval to offer consolation and minor pools in the pari-mutuel plus pool, and be granted approval before implementation.
 - (1) The net pari-mutuel plus pool shall be distributed in accordance with the method for distributing the major share to all winners who selected the designated number of finishers, in exact positions.
 - (2) If there are no wagers qualifying for the major share, the net major share shall be added to the carryover.
- d. If there is a dead heat in the pari-mutuel plus pool involving:
 - (1) Contestants representing the same betting interest, the pool will be distributed as if no dead heat occurred.
 - (2) Contestants representing two or more betting interests, the pool will be distributed as a single price pool with each winning wager receiving an equal share of the profit.
- e. The pari-mutuel plus pool shall be canceled and all pari-mutuel plus wagers for the individual performance shall be refunded under the following conditions:
 - (1) If the pari-mutuel plus contests are canceled or declared no contest prior to the first pari-mutuel plus contest being declared official, the entire pari-mutuel plus pool shall be refunded on wagers for those contests.
 - (2) If all remaining pari-mutuel plus contests are canceled or declared no contests after the first pari-mutuel plus contest is declared official, the entire net pari-mutuel plus pool, but not the pari-mutuel plus carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the pari-mutuel plus contest. However, if there are no wagers selecting the winning combination in the pari-mutuel plus contest, the entire pool shall be refunded on wagers for those contests.
- f. Mandatory distribution.
 - (1) The service provider must submit a written request to the commission for permission to distribute the pari-mutuel plus carryover on a specific performance. The request to the commission shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance of the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pari-mutuel plus pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.

- (2) If the pari-mutuel plus carryover is designated for distribution on a specific date and performance, and if there are no wagers qualifying for the major share, which is sixty-five percent of the pool, then the following precedence shall be followed in determining the winning wagers for the pari-mutuel plus pool and carryover pool:
 - (a) The major share and the pari-mutuel plus carryover shall be distributed as a single price pool to those who selected the designated number of finishers, in exact positions, based upon the official order of finish, and who have received a matching random number selected through a drawing of one of a designated group of numbers, minus the service provider or racetrack take-out.
 - (b) The major share and the pari-mutuel plus carryover shall be distributed as a single price pool to those who correctly selected the most finishers, in their exact positions, based upon the official order of finish.
 - g. If for any reason, the pari-mutuel plus carryover must be held over to the corresponding pari-mutuel plus pool of a subsequent pari-mutuel plus contest, the carryover shall be deposited in an interest-bearing account approved by the commission. The pari-mutuel plus carryover plus accrued interest shall then be added to the pari-mutuel plus pool of the following meet on a date and performance so designated by the commission.
 - h. With written approval of the commission, the service provider may contribute to the pari-mutuel plus carryover a sum of money to be designated by the service provider or the racetrack. Moneys contributed to the pool may be withdrawn when the pool accumulation totals the moneys contributed.
 - i. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
 - j. The service provider may suspend previously approved pari-mutuel plus wagering with prior approval from the commission. Any carryover shall be held until the suspended pari-mutuel plus wagering is reinstated. A service provider may request approval of the pari-mutuel plus wager or a separate pari-mutuel plus wagering pool for specific performances.
3. **Pick 1-2-3 pool.** The pick 1-2-3 pool requires selection of the first three finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.
 - a. Pick 1-2-3 requires a selection of a combination of either nine, eight, seven, or six, first, second, and third place finishers, in any order, in three consecutive races that are designated as pick 1-2-3 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3 race or any combination of five or less qualifiers in each of the three races.
 - b. The service provider must obtain written approval from the commission concerning the scheduling of the pick 1-2-3 contests, the designation of qualifying races, and the cap to be set on the carryover. Any changes to the pick 1-2-3 wager format requires prior approval from the commission.
 - c. The pick 1-2-3 pool and carryover, if any, shall be distributed as a single price pool to those who selected the winning combination of the top three finishers in three races, or a decreasing scale of qualifiers eight of nine, seven of nine, or six of nine, in the following payout method:

- (1) Fifty percent of net pool and accumulated jackpot divided between players selecting nine of nine.
 - (2) Thirty percent of net pool divided between players selecting eight of nine.
 - (3) Fifteen percent of net pool divided between players selecting seven of nine.
 - (4) Five percent of net pool divided between players selecting six of nine.
 - (5) If there are no winning wagers for the nine of nine winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (6) If there are no winning wagers for the eight of nine winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (7) If there are no winning wagers for the seven of nine winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (8) If there are no winning wagers for the six of nine winners, then five percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
- d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
- e. Scratches.
- (1) If, due to a late scratch, the number of betting interests in a contest of the pick 1-2-3 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3 pool only, such contests shall be declared no contest and the pick 1-2-3 pool shall be declared a canceled contest.
 - (2) Should a betting interest in any contest of the pick 1-2-3 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
 - (3) Scratch contestant losers:
 - (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3 pool only.
 - (b) Other correctly selected finishers in the pick 1-2-3 shall continue to count toward winning, as usual.
- f. Canceled contests.
- (1) If any of the pick 1-2-3 contests are canceled or declared no contest prior to the first pick 1-2-3 contest being declared official, the daily pick 1-2-3 pool shall be refunded on the pick 1-2-3 wagers for those contests.

- (2) If all remaining pick 1-2-3 contests are canceled or declared no contest after the first pick 1-2-3 contest is declared official, the entire net pick 1-2-3 pool, but not the pick 1-2-3 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3 contest, the daily pick 1-2-3 pool shall be refunded on pick 1-2-3 wagers for those contests.
 - g. **Mandatory distribution.** The service provider must submit a written request for permission to distribute the pick 1-2-3 carryover on a specific performance to the commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.
4. **Pick 1-2-3-4-5 pool.** Pick 1-2-3-4-5 requires selection of the first five finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.
- a. Pick 1-2-3-4-5 requires the selection of a combination of either fifteen, fourteen, thirteen, or twelve first, second, third, fourth, and fifth place finishers, in any order, in three consecutive races that are designed as pick 1-2-3-4-5 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3-4-5 race or any combination of eleven or less qualifiers in each of the three races.
 - b. The service provider must obtain written approval from the commission concerning the scheduling of the pick 1-2-3-4-5 contests, the designation of qualifying races and the cap to be set on the carryover. Any changes to the pick 1-2-3-4-5 wager format require prior approval from the commission.
 - c. The pick 1-2-3-4-5 pool and carryover, if any, shall be distributed as a single price pool to those who selected the first five finishers in three races or a decreasing scale of qualifiers fifteen of fifteen, fourteen of fifteen, thirteen of fifteen, or twelve of fifteen in the following payout method:
 - (1) Fifty percent of net pool and accumulated jackpot divided between players selecting fifteen of fifteen.
 - (2) Thirty percent of net pool divided between players selecting fourteen of fifteen.
 - (3) Fifteen percent of net pool divided between players selecting thirteen of fifteen.
 - (4) Five percent of net pool divided between players selecting twelve of fifteen.
 - (5) If there are no winning wagers for the fifteen of fifteen winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
 - (6) If there are no winning wagers for the fourteen of fifteen winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
 - (7) If there are no winning wagers for the thirteen of fifteen winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.

- (8) If there are no winning wagers for the twelve of fifteen winners, then five percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
 - d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3-4-5 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
 - e. Scratches.
 - (1) If, due to a late scratch, the pick 1-2-3-4-5 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3-4-5 pool only, such contests shall be declared no contest and the pick 1-2-3-4-5 pool shall be declared a canceled contest.
 - (2) Should a betting interest in any contest of the pick 1-2-3-4-5 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
 - (3) Scratch contestant losers:
 - (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3-4-5 pool only.
 - (b) Other correctly selected finishers in the pick 1-2-3-4-5 shall continue to count toward winning, as usual.
 - f. Canceled contests.
 - (1) If any of the pick 1-2-3-4-5 contests are canceled or declared no contest prior to the first pick 1-2-3-4-5 contest being declared official, the entire pick 1-2-3-4-5 pool shall be refunded on the pick 1-2-3-4-5 wagers for those contests.
 - (2) If all remaining pick 1-2-3-4-5 contests are canceled or declared no contest after the first pick 1-2-3-4-5 contest is declared official, the entire net pick 1-2-3-4-5 pool, but not the pick 1-2-3-4-5 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3-4-5 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3-4-5 contest, the entire pick 1-2-3-4-5 pool shall be refunded on pick 1-2-3-4-5 wagers for those contests.
 - g. Mandatory distribution. The service provider must submit a written request for permission to distribute the pick 1-2-3-4-5 carryover on a specific performance to the commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3-4-5 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performances.
 - h. Coupled entries and mutuel fields. Coupled entries and mutuel fields are not permitted in pick 1-2-3-4-5 contests.
5. **123racing Pick-n Wager©.**

- a. The 123racing Pick-n Wager is a separate pari-mutuel pool wager established by the association or licensee on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all rounds have been completed, based on cumulative mythical two dollar win, place, show wagers (a fantasy two dollar across the board wager), on one betting interest per wagering race. It is not a parlay and has no connection with or relation to other pools conducted by the association or licensee other than the utilization of live race payouts as a means of calculating players' fantasy points.
- b. A valid 123racing Pick-n Wager ticket shall be evidence of a binding contract between the holder of the ticket and the association or licensee, and shall constitute an acceptance of 123racing Pick-n Wager provisions and rules contained in this chapter.
- c. A 123racing bet may not be retracted once it has been purchased.
- d. A 123racing Pick-n Wager may be given a distinctive name by the association conducting the meeting or licensee, subject to commission approval, and existing license, copyrights, and patents.
- e. 123racing Pick-n Wagers shall be conducted as follows:
 - (1) Each player wagers into the gross pool and selects one betting interest per wagering race.
 - (2) The number of races that complete the wager varies depending on the specifics of "tournament", as determined by the host racing association or licensee, but shall include no less than four races.
 - (3) Each round of the "tournament" consists of a mythical win, place, show wager on one betting interest per race.
 - (4) Official program numbers must be used for all wagers. All players are responsible for ensuring each wager is placed correctly.
 - (5) Live race payouts are used to calculate players' fantasy points totals.
 - (6) As part of the announced tournament rules, and as approved by the commission, the host racing association or licensee may opt to cap the maximum odds on all fantasy payouts.
 - (7) Each player's fantasy points will be reflected in their cumulative fantasy points totals at the end of each race.
 - (8) Following a race being declared "official", the actual pari-mutuel pool payout for a fantasy across-the-board wager will be translated to points and added to a player's cumulative fantasy points totals. The host racing association or licensee may specify a maximum number of points that can be accumulated by any one wager per contest race subject to commission approval.
 - (9) Of the bettors, the players with the highest fantasy points totals after the last leg are the "winners".
 - (10) A portion of the net pari-mutuel pool as determined in advance of the contest by the host racing association or licensee and approved by the commission, designated the "major net pool" is distributed in accordance with subdivision i.

- (11) In addition to the major net pool, a host racing association or licensee may designate in advance of the contest and as approved by the commission a portion of the net pari-mutuel pool for carryover as follows:
- (a) A "perfect pick carryover pool" is carried over to subsequent contests until a bettor successfully selects the winning runners of all designated contests in the current contest, in which case the perfect pick carryover pool will be equally divided between the bettors successfully selecting every winning runner.
 - (b) A "place carryover pool" is carried over to subsequent contests until a bettor successfully selects runners finishing first or second in all designated contests in the current contest, in which case the place carryover pool will be equally divided between the bettors successfully selecting runners finishing first or second in all designated contests.
 - (c) A "show carryover pool" is carried over to subsequent contests until a bettor successfully selects runners finishing first, second, or third in all designated contests in the current contest, in which case the show carryover pool will be divided between the bettors successfully selecting runners finishing first, second, or third in all designated contests.
 - (d) A host racing association or licensee may designate a contest on which a perfect pick carryover pool, place carryover pool, or show carryover pool is terminated and fully distributed to the best performing bettor or bettors in that contest.
- f. A fantasy wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
 - g. If a selection in any race designates a betting interest that was scratched, excused, or determined by the stewards to be a nonstarter in the race, the fantasy wager will be on the tote favorite in that race.
 - h. Points for dead heats will be determined by the payouts of the live corresponding race.
 - i. The takeout and its distribution for the 123racing Pick-n Wager shall be set and approved by the host regulatory commission, but shall include the distribution of the negotiated proprietary fee.
 - j. All tickets shall be refunded if all races comprising the 123racing Pick-n Wager are canceled or declared as a no contest. The entire pool shall be refunded if less than four races are completed and if four or more races are completed the net pool shall be distributed pursuant to subdivision l.
 - k. After wagering closes on the first race comprising the 123racing Pick-n Wager, the tournament shall be deemed closed and no entry ticket shall be sold, exchanged, or canceled. No person shall be determined to hold a winning 123racing Pick-n Wager ticket until the last designated race has been declared official.
 - l. In accordance with the following provisions, the host racing association or licensee shall distribute the net pool to the holders of valid tickets that correctly selected the combination of first-place, second-place, and third-place place finishers that generated the top three highest points totals through the designated races or rounds comprising the 123racing Pick-n Wager as follows, unless otherwise approved by the host racing commission:

- (1) Sixty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the highest fantasy points totals after all races have been completed.
 - (2) Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the second-highest points totals after all races have been completed.
 - (3) Ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the third-highest points totals after all races have been completed.
 - (4) If there are two pari-mutuel wagers that equal the highest points totals after all races have been completed, ninety percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to those ticket holders. Ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets with wagers which have the third-highest points totals after all races have been completed.
 - (5) If there are three pari-mutuel wagers that equal the highest points totals after all races have been completed, one hundred percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to those ticket holders.
 - (6) If one pari-mutuel ticket wager scores the highest points totals, and two or more pari-mutuel tickets wagers equal the second-highest points totals after all races have been completed, sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, and forty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the second-highest points totals after all races have been completed.
 - (7) If one pari-mutuel ticket wager scores the highest points totals, one pari-mutuel ticket wager scores the second-highest points totals, and two or more pari-mutuel ticket wagers score the third-highest points totals after all races have been completed, then sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the second-highest scoring ticket holder, and ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the third-highest points totals.
- m. Should circumstances occur which are not addressed by these rules, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the 123racing Pick-n Wager pool made by the commission are final.

6. Tote-X win.

- a. The Tote-X wagering platform uses a conventional pari-mutuel betting system and a separate pari-mutuel pool to allow ticket holders to wager among themselves on the results of individual races. However, at the time the bet is placed on a selected race through the Tote-X platform, the customer is allocated a fixed number of redeemable

units ("RUs") based upon the then-current odds of the horse being wagered upon using proprietary algorithms. The algorithms are applied uniformly to all wagers in the pool. These RUs are then held within the Tote-X platform specific to that bettor. When the odds of the horses in that race change after the initial wager is placed, the value of the issued RUs fluctuates in accordance with the change in odds. The customer may then choose to redeem all or part of their RUs for the current cash value of the RUs at any time prior to the close of wagering on the selected race. The Tote-X platform calculates the final pool by combining all bets made into the Tote-X win pool on a given event and then deducting commission, refunds, redemption payouts, and applicable taxes and fees.

b. For each Tote-X win pool:

- (1) All bets are placed into the Tote-X win pool for a specific race.
- (2) A valid Tote-X ticket or unique electronic identifier shall be evidence of a binding contract between the holder of the ticket and the host racing association or licensee, and shall constitute an acceptance of Tote-X provisions and rules contained in this chapter.
- (3) Official program numbers must be used for all Tote-X wagers. All players are responsible for ensuring each wager is placed correctly.
- (4) The odds calculations for Tote-X are performed on the same basis as for a conventional pari-mutuel pool. In the Tote-X platform, the proprietary mathematical algorithms will then automatically recalculate the RU values for each horse after each transaction or batch of transactions (bet or redemption), reflecting the change in the current Tote-X pool odds.
- (5) The Tote-X proprietary algorithms shall be applied uniformly to all wagers in the pool.
- (6) As approved by the commission, the host racing association or licensee may opt to cap the maximum odds on all Tote-X payouts.
- (7) A Tote-X wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
- (8) The customer may choose to redeem all or part of their RUs for their then-current value at any time prior to the close of the relevant pool if a horse or combination of horses has not been excused by the stewards or declared a nonstarter and the pool operator has not otherwise suspended the capacity for ticket holders to redeem their wagers.
- (9) A Tote-X wager may not be rescinded once it has been purchased other than through proper redemption of RUs in accordance with these rules.
- (10) A redemption requires the customer to surrender all or part of the underlying wager. In the event of a redemption of all RUs issued for a specific wager, the original wager shall be surrendered in its entirety. In the event of a partial redemption of the RUs issued for a specific wager, the original wager will be surrendered in proportion to the percentage of RUs being redeemed;
- (11) Subsequent to the deduction from the pool of each redemption payout, the remainder of the funds in the pool shall constitute the new value of all RUs which are available for subsequent redemptions. Thereafter, those RUs which are not

redeemed prior to the closure of the pool constitute the net pool for distribution as payoff to ticket holders of wagers following a race being declared "official".

- (12) Once the Tote-X win pool is closed prior to the race, ticket holders may no longer redeem any of their RUs.
 - (13) Each customer holding a successful bet after the race is declared "official" is entitled to collect according to the relevant final odds.
 - (14) From each redemption and final pool payout a commission shall be deducted by the host racing association or licensee in accordance with state law.
 - (15) The commission and its distribution for the Tote-X wager shall be approved by the commission.
- c. Notwithstanding any language to the contrary, the funds remaining in the Tote-X win pool following the payment of redemptions prior to the closure of the pool constitute the net pool for the purpose of distribution as payoff to winning ticket holders.
 - d. Any funds remaining after the closing of the Tote-X win pool will be distributed as payoff to the winning ticket holders in the same manner as a win pool pursuant to subsection 2.
 - e. Notwithstanding subsection 20 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, a horse not coupled with another as a betting interest is excused by the stewards or declared a nonstarter, an amount based on the then-current odds as represented by the current value of the RUs on such horse shall be deducted from the pools and refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager, then there may be no refund unless all of the horses representing such single betting interest as excused by the stewards or declared a nonstarter, or both.
 - f. Notwithstanding subsection 21 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, the race is thereafter canceled or declared a "no race" by the stewards, and no redemptions have occurred prior to such, then all wagering thereon shall be refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. However, if one or more redemptions have occurred prior to the stewards canceling or declaring a "no race", then all wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of cancellation upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
 - g. Notwithstanding subsection 22 or any language to the contrary contained in this chapter, in the event of an irreparable breakdown of the totalizator system during the wagering on a race, all Tote-X wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of irreparable breakdown upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
 - h. Notwithstanding section 69.5-01-08-05 or any language to the contrary contained in this chapter, there is no minimum payoff for a Tote-X redemption. However, any distribution made after closing of the Tote-X win pool shall be subject to the minimum payoff provisions of section 69.5-01-08-05.
 - i. Should circumstances occur which are not addressed by these rules, questions arising therefrom shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the Tote-X pool made by the stewards are final.

7. **Tournament wager.**

- a. The tournament wager is a separate pari-mutuel pool wager established by the licensee on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all races have been completed. It is not a parlay and has no connection with or relation to other pools conducted by the licensee other than the utilization of live race payouts as a means of calculating players' points.
- b. A valid tournament wager ticket is evidence of a binding contract between the holder of the ticket and the association, and constitutes an acceptance of tournament wager provisions and rules contained in this chapter.
- c. A tournament wager ticket may not be retracted within two hours of post time unless otherwise approved by the commission. A tournament wager ticket may be canceled only with the approval of the licensee.
- d. A licensee may establish a minimum and maximum number of entries per tournament. If the minimum number of entries are not received, the licensee may cancel and refund all wagers in that tournament. The regarding minimum entries for each tournament must be approved by the commission and published in advance of the opening of the tournament.
- e. A tournament wager may be given a distinctive name by the licensee, subject to commission approval.
- f. Tournament wagers must be conducted as follows:
 - (1) Mythical win/place and win/place/show tournament:
 - (a) Players select one primary betting interest for each designated tournament race.
 - (b) Players may select an alternate betting interest. If there is a scratch of the player's primary selection, the alternate will be substituted. If there is also a scratch of the player's alternate selection, or if no alternate selection has been made, the selection will default to the remaining betting interest with the best post time odds as determined by win pool odds.
 - (c) Players accrue earnings based on the actual pari-mutuel win, place, or show payouts for any correct selections, determined from tote payouts, based on a mythical win/place or win/place/show wager of a dollar value established by the licensee in advance of the contest. The licensee may establish maximum mythical earnings in advance of the opening of the contest. As an example, for a two-dollar win/place/show tournament, the maximum payout may be forty-two dollars for a successful win selection, twenty-two dollars for a successful place selection, and twelve dollars for a successful show selection.
 - (d) Should there be a tie in earnings in the contest, ties will be broken in accordance with the following procedures:
 - [1] The entry with the most number of winners selected will win the tie, if a tie still remains, then;
 - [2] The entry selecting the horse with the highest mutuel win payout will win the tie, if a tie still remains, then;

[3] The entry with the most number of place horses selected will win the tie, if a tie still remains, then;

[4] The entry with the highest mutuel place payout will win the tie, if a tie still remains, then;

[5] The entry with the most number of show (third place finishers that did not win or place) horses selected will win the tie, if a tie still remains, then; and

[6] The winning entry will be determined by a random draw among eligible entries.

(e) A licensee may provide qualification for future or online tournaments for the entry based on their final ranking, including any tie breakers. Such an offering must be included in the tournament rules published in advance of the opening of the tournament.

(f) Pari-mutuel distributions are made at the conclusion of the tournaments that are based on the pari-mutuel distribution schedule published by the licensee in advance of the opening of the tournament.

(2) Survivor tournament:

(a) Players select one primary betting interest for each designated tournament race. Players remain in the tournament if the player's betting interest finishes in a win, place, or show position. Players whose betting interest does not finish win, place, or show must be eliminated from the tournament.

(b) Players may select an alternate betting interest. If there is a scratch of the player's primary selection, the alternate will be substituted. If there is also a scratch of the player's alternate selection, or if no alternate selection has been made, the selection will default to the remaining betting interest with the best post time odds as determined by win pool odds.

(c) Players earn one point per correct selection of a betting interest finishing in a win, place, or show position as determined by existence of a pari-mutuel payout for that position.

(d) If the size of the field or other circumstances produce only win/place or only win payouts, only those horses will be considered to be correct selections for the purposes of scoring.

(e) In the discretion of the licensee, tiebreakers may be applied in survivor tournaments pursuant to the terms published in advance of the opening of the tournament.

(f) Pari-mutuel distributions are made at the conclusion of the tournaments that are based on the pari-mutuel distribution schedule published by the licensee in advance of the opening of the contest.

(3) Exacta box tournament:

(a) Players select three primary betting interests for each designated tournament race.

- (b) Players may select an alternate betting interest for each of their three primary selections. If there is a scratch of the player's primary selection, the alternate will be substituted. If there is also a scratch of the player's alternate selection, or if no alternate selection has been made, the selection will default to the remaining betting interest with the best post time odds as determined by win pool odds.
- (c) Players accrue earnings based on the actual pari-mutuel exacta payout for any correct selections regardless of order, determined from tote payouts, based on a mythical exacta wager of a dollar value established by the licensee in advance of the contest. The licensee may establish maximum mythical earnings in advance of the opening of the contest.
- (d) In the discretion of the licensee, tiebreakers may be applied in exacta box tournaments pursuant to the terms published in advance of the opening of the tournament.
- (e) Pari-mutuel distributions are made at the conclusion of the tournaments that are based on the pari-mutuel distribution schedule published by the licensee in advance of the opening of the contest.
- g. A fantasy wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
- h. Earnings or points for dead heats will be determined by the payouts of the live corresponding race.
- i. The takeout and its distribution for the tournament wager shall be set and approved by the host regulatory commission.
- j. All tickets must be refunded if all races comprising the tournament wager are canceled or declared as a no contest. The entire pool must be refunded if less than seventy percent of the tournament's designated races remain.
- k. After wagering closes on the first race comprising the tournament wager, the tournament is deemed closed and no entry ticket may be sold, exchanged, or canceled. No person shall be determined to hold a winning tournament wager ticket until the last designated race has been declared official.
- l. The licensee shall distribute the net pool to the holders of valid tickets that correctly selected the combination of finishers that generated the highest fantasy earnings or points totals through the designated races/rounds comprising the tournament wager. In advance of the opening of the tournament, the licensee shall submit a payout schedule to the racing commission for approval providing the number of places to be paid and the percentage of payout for each place. Approved payout schedules must be published in advance of the opening of the tournament to which they apply.
- m. Should circumstances occur which are not addressed by these rules, questions arising thereby must be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the tournament wager pool made by the commission are final.
- 8. **Refunds.** Unless otherwise provided, after wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a

combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.

~~8.9.~~ **Race canceled.** If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as otherwise provided.

~~9.10.~~ **Totalizator breakdown.** In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race must be declared closed and the payoff must be computed on the sums wagered in each pool up to the time of the breakdown.

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General Authority: NDCC 53-06.2-05

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TITLE 75
DEPARTMENT OF HUMAN SERVICES

JANUARY 2017

CHAPTER 75-02-01.2 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

Section

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75-02-01.2-75	Temporary Assistance for Needy Families Social Contract [Repealed]
75-02-01.2-76	Social Contract [Repealed]

75-02-01.2-77	Annual Reassessment [Repealed]
75-02-01.2-78	Mandatory Contract Requirements [Repealed]
75-02-01.2-79	Sanctions for Noncompliance With Temporary Assistance for Needy Families Program Requirements
75-02-01.2-80	Good Cause Determination
75-02-01.2-81	Good Cause for Failure to Complete Temporary Assistance for Needy Families Social Contract [Repealed]
75-02-01.2-82	Job Opportunities and Basic Skills Program - Definitions
75-02-01.2-83	Job Opportunities and Basic Skills Program - Basic Requirements [Repealed]
75-02-01.2-84	Job Opportunities and Basic Skills Program - Satisfactory Participation
75-02-01.2-85	Job Opportunities and Basic Skills Program - Work Requirements
75-02-01.2-86	Job Opportunities and Basic Skills Program - Tribal Native Employment Works Program
75-02-01.2-87	Job Opportunities and Basic Skills Program - Exemptions From Participation
75-02-01.2-88	Job Opportunities and Basic Skills Program - Referral
75-02-01.2-89	Job Opportunities and Basic Skills Program - Orientation, Assessment, and Employability Planning [Repealed]
75-02-01.2-90	Job Opportunities and Basic Skills Program - Supportive Services and Post Temporary Assistance for Needy Families Supportive Services
75-02-01.2-91	Job Opportunities and Basic Skills Program - Educational Activities Related to Secondary Education, Basic and Remedial Education, or Education in English Proficiency [Repealed]
75-02-01.2-92	Job Opportunities and Basic Skills Program - Job Skills Training Directly Related to Employment [Repealed]
75-02-01.2-93	Job Opportunities and Basic Skills Program - Unsubsidized Employment [Repealed]
75-02-01.2-94	Job Opportunities and Basic Skills Program - Job Search and Job Readiness [Repealed]
75-02-01.2-95	Job Opportunities and Basic Skills Program - Job Development and Job Placement Activities [Repealed]
75-02-01.2-96	Job Opportunities and Basic Skills Program - Vocational Education [Repealed]
75-02-01.2-97	Job Opportunities and Basic Skills Program - Provision of Child Care Services to Another Participant Engaged in a Community Service Program [Repealed]
75-02-01.2-98	Job Opportunities and Basic Skills Program - Work Experience and Community Service Program [Repealed]
75-02-01.2-99	Job Opportunities and Basic Skills Program - Work Readiness Activities [Repealed]
75-02-01.2-100	Job Opportunities and Basic Skills Program - On-the-Job Training [Repealed]
75-02-01.2-101	Job Opportunities and Basic Skills Program - Subsidized Public or Private Sector Employment [Repealed]
75-02-01.2-102	Job Opportunities and Basic Skills Program - Failure or Refusal to Participate
75-02-01.2-103	Job Opportunities and Basic Skills Program - Good Cause for Failure or Refusal to Comply With a Referral to, or Participate in, the Job Opportunities and Basic Skills Program
75-02-01.2-104	County Administration

75-02-01.2-02.2. Kinship care assistance.

1. Kinship care provides a monthly maintenance payment and supportive services to a child residing outside the child's parental home with a caretaker who is related to that child within the fifth degree of kinship. To be eligible:
 - a. A court of competent jurisdiction must have entered an order placing a child's care, custody, and control with a county agency, an official of a county agency, the executive director of the department, or the division of juvenile services; and

- b. Before placing a child in kinship care for more than thirty days, the child's custodian must have completed a family study, a child abuse and neglect background check, and other investigations, as identified in chapter 75-03-14, as the department may determine necessary to demonstrate that:
 - (1) The home in which care is provided is in fit and sanitary condition and properly equipped to provide good care to the child;
 - (2) The caretaker and other adults residing in the home of the caretaker properly qualify to carry out the duties and responsibilities of a kinship care provider;
 - (3) Kinship care provided in the home is for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children cared for in the home; and
 - (4) The home is maintained according to standards prescribed for its conduct by the department.
2. Within the limits established by the department, supportive services may provide reimbursements for child care expenses, transportation, clothing, emergent needs, activity fees, and, as a payer of last resort, reasonable legal fees incurred by or on behalf of a child and approved by the department.
3. For purposes of this section, a relative is within the fifth degree of kinship if the relative by birth, marriage, or adoption, is the child's sibling; niece; nephew; grandniece; grandnephew; grandparent; aunt; uncle; first cousin; first cousin once removed; great-grandparent; great-aunt; great-uncle; parent's first cousin; great, great-grandparent; great, great-aunt; great, great-uncle; or great, great, great-grandparent.
4. Kinship care monthly maintenance payments must be the same as the standard of need amount for a shared living arrangement for a child under the temporary assistance for needy families program and an additional monthly amount established by the department.

History: Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011; [January 1, 2017](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-06. Selection of primary individual.

1. Each household shall have a primary individual. The primary individual must be identified among the household members, with one of the following relationships to a dependent child member of the household, using the following order of priority:
 - a. A natural or adoptive parent;
 - b. An adult relative, within the fifth degree of kinship;
 - c. A stepparent;
 - d. A spouse of any person identified in subdivision a, b, or c, whether or not that marriage is terminated by death or divorce; and
 - e. A minor brother, sister, half-brother, half-sister, stepbrother, or stepsister who is at least sixteen years of age.
2. The primary individual may be eligible or ineligible for the assistance. ~~An ineligible caretaker who receives supplemental security income benefits may not receive assistance from the program.~~

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-11. Good cause for failure to submit complete and timely monthly report.

Repealed effective January 1, 2017.

~~— Good cause for failure to submit a complete and timely monthly report exists only if:~~

- ~~— 1. The monthly report form was unavailable to the household because none was sent or it was lost in the mail;~~
- ~~— 2. The monthly report form was returned to the sender due to lack of sufficient postage;~~
- ~~— 3. The caretaker relative and all other responsible members of the household were absent from their usual place of residence, due to a death or serious illness in the family or the relocation of the household, during all the days between the day the report form was provided and the day it was to be returned;~~
- ~~— 4. Weather conditions prevented mailing by the household, delivery by the postal service, or receipt by the county agency;~~
- ~~— 5. The household was unable, despite reasonable efforts, to obtain necessary verification documents;~~
- ~~— 6. The county agency determines that the report form was incomplete due to the recipient's misinterpretation or misunderstanding of the form;~~
- ~~— 7. The county agency determines, for some other reason, that the household could not reasonably have submitted a timely and complete report; or~~
- ~~— 8. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.~~

~~**History:** Effective December 9, 1996; amended effective January 1, 2003.~~

~~**General Authority:** NDCC 50-09-02, 50-09-25~~

~~**Law Implemented:** NDCC 50-09-02~~

75-02-01.2-26. Disqualifying transfers.

1. The transfer of an asset, without adequate consideration, disqualifies the household from receipt of benefits ~~for a period beginning with the month in which the transfer took place and continuing for a number of months equal to the result of dividing the household's total equity value in the transferred asset by the standard of need applicable to the household.~~ For a participating household, the disqualification begins the first benefit month after notice of adverse action. For a nonparticipating household, the period of disqualification begins with the month of application.
2. Length of disqualification is as follows:
 - a. One month for a disqualifying transfer of more than zero dollars, but less than two hundred fifty dollars;
 - b. Three months for a disqualifying transfer of two hundred fifty dollars or more, but less than one thousand dollars;

c. Six months for a disqualifying transfer of one thousand dollars or more, but less than three thousand dollars;

d. Nine months for a disqualifying transfer of three thousand dollars or more, but less than five thousand dollars; and

e. Twelve months for a disqualifying transfer of five thousand dollars or more.

3. Notwithstanding subsection 1, a transfer is not disqualifying if it is made by an individual, who is not a responsible relative, by removing the name of a member of the household from a jointly owned account to which no member of the household contributed, provided that the name of the household member is removed:

a. If the existence of the account is discovered by the county agency while the household is in the process of applying for assistance, before the initial payment is certified; or

b. If the existence of the account is discovered by the county agency while the household is receiving benefits, within thirty days after that discovery.

~~3.4.~~ If the household member who caused the household's ineligibility due to a disqualifying transfer leaves the household, the remaining household members are no longer subject to the disqualification penalty only if the transferred asset was owned solely by the departing household member. Effective the day following the day in which the individual left the household, the remaining members may apply for benefits. If the transferred asset was jointly owned with any remaining member of the household, the disqualification period must continue as initially calculated.

~~4.5.~~ When an individual who caused a household's ineligibility due to a disqualifying transfer moves to a different household, the new household may be disqualified from the receipt of benefits for a period beginning with the month in which the individual became a member of the new household and continuing ~~for a number of months equal to the result of:~~

~~a. Reducing the individual's total equity value in the transferred asset by an amount equal to the number of months of disqualification imposed upon the previously disqualified household times the standard of need applicable to that household; and~~

~~b. Dividing that result by the standard of need applicable to the new household~~for the remainder of the period of disqualification.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-28. Eligibility for aliens who arrived before August 22, 1996.

Repealed effective January 1, 2017.

~~1. Except as provided in subsection 3, an alien who arrived before August 22, 1996, and who is lawfully admitted for permanent residence under color of law is eligible for benefits if all other requirements for eligibility are met.~~

~~2. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for benefits because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.~~

- ~~3. a. A sponsored alien who applies for benefits and whose sponsor's income and assets must be deemed available to the alien, as a condition of eligibility, shall provide the county agency with information and verification sufficient to determine the portion of the sponsor's income and assets that may be deemed available to the alien.~~
- ~~b. The sponsor and the sponsored alien are both liable for the amount of any overpayment of benefits that results from the failure of either to provide information and verification sufficient to allow the county agency to correctly determine the portion of the sponsor's income and assets that may be deemed available to the alien.~~
- ~~c. For purposes of this section:
 - ~~(1) "Sponsor" means an individual including an individual's spouse, public organization, or private organization who executed an affidavit of support or similar agreement on behalf of an alien, who is not the child of the sponsor, as a condition of the alien's entry into the United States.~~
 - ~~(2) "Sponsored alien" means an alien whose entry into the United States was conditioned on the execution of an affidavit of support or similar agreement by a sponsor who is not a parent or the spouse of a parent of the alien.~~~~

~~**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.~~

~~**General Authority:** NDCC 50-09-02, 50-09-25~~

~~**Law Implemented:** NDCC 50-09-02~~

75-02-01.2-28.1. Eligibility for aliens who arrived on or after August 22, 1996.

~~Repealed effective January 1, 2017.~~

- ~~1. This section applies only to immigrants who arrive in the United States on or after August 22, 1996.~~
- ~~2. Except as provided in subsection 3, no noncitizen immigrant is eligible for benefits for the first five years of that immigrant's residence in the United States.~~
- ~~3. An otherwise eligible noncitizen immigrant may be provided benefits:
 - ~~a. After that immigrant has resided in the United States for five years. The immigrant's sponsor's and sponsor's spouse's income and assets must be deemed available to the immigrant, if applicable;~~
 - ~~b. If the immigrant is:
 - ~~(1) A refugee, asylee, victim of human trafficking, or has been granted withholding of deportation.~~
 - ~~(2) A veteran of United States military service, an individual on active military duty, or a spouse or dependent of such a veteran or person on active military duty.~~
 - ~~(3) An entrant entitled to refugee and entrant assistance.~~
 - ~~(4) Deportation withheld under section 243(h) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].~~~~~~

- ~~(5) Cuban or Haitian entrants as defined in section 501(e) of the Refugee Education Assistance Act of 1980.~~
- ~~(6) Amerasian entrant.~~
- ~~(7) Conditional entrant under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] prior to April 1, 1980, if a veteran or on active duty in the United States armed forces or spouse or unmarried dependent child of a veteran or person on active duty.~~
- ~~(8) Lawfully admitted for residence if lawfully residing in the United States on August 22, 1996, and if receiving benefits for blindness or disability; or was born on or before August 22, 1931; or is now under eighteen years of age; or if elderly, disabled; or child entered after August 22, 1996, and meet other alien eligibility criteria or ineligible.~~
- ~~(9) An individual that has a past or current involvement with the United States armed forces and is lawfully admitted to the United States under immigration and naturalization service status. Spouses and unmarried dependent children of an individual with past or current United States military involvement may also meet eligibility criteria.~~

~~**History:** Effective July 1, 1997; amended effective January 1, 2003; July 16, 2003; January 1, 2011.~~

~~**General Authority:** NDCC 50-09-02, 50-09-25~~

~~**Law Implemented:** NDCC 50-09-02~~

75-02-01.2-44. Income described.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to persons other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.
2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each household member must accept any earned rights benefits to which entitled. Each household member must provide verification as to whether the household member is qualified for earned rights benefits; and, if qualified, must make application for those benefits and secure those benefits if qualified.
4. Earned income includes:
 - a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
 - b. Earnings from on-the-job training including the Workforce ~~Investment~~Innovation and Opportunity Act of 1998 and job opportunities and basic skills program;
 - c. Wages received as the result of participation in ~~the mainstream and green thumb programs~~a program under the Older Americans Act;

d. ~~Earnings of recipients employed by schools under title I of the Elementary and Secondary Schools Act [20 U.S.C. 236 et seq.];~~

~~e.~~ Wages received from sheltered workshop employment;

~~f.e.~~ Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;

~~g.f.~~ Compensation for jury duty;

~~h.g.~~ Tips;

~~i.h.~~ Income from boarders;

~~j.i.~~ Income from room rentals;

~~k.j.~~ Income from participation in job corps; and

~~l.k.~~ Income from internship or stipends.

5. Unearned income includes:

a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;

b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;

c. Cash contributions ~~from relatives provided to the household for living expenses;~~

d. Cash gifts;

e. ~~Poor relief or general~~ **General** assistance payments made to any member of the household by a county agency or the bureau of Indian affairs; and

f. Any other form of income that is not earned income.

6. Deemed income includes:

a. In the case of income deemed from a stepparent ~~or alien parent~~, that stepparent's ~~or alien parent's~~ entire gross income less:

(1) The greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance;

(2) An additional amount for the support of the stepparent ~~or alien parent~~ and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent ~~or alien parent~~ as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent ~~or alien parent~~ and those other individuals described in this paragraph;

(3) Spousal support child support payments, health insurance premiums, and child or adult dependent care costs related to employment or employment and education or training actually being made to or on behalf of persons not living in the home; and

- (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent ~~or alien parent~~ as dependents for federal income tax purposes.
- b. In the case of income deemed from the sponsor of a sponsored alien, the ~~entire gross~~ income of the sponsor and the sponsor's spouse ~~in excess of~~ is calculated by allowing:
 - (1) The earned income disregard of the greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance; and
 - (2) A disregard equal to one hundred ~~twenty-five~~thirty percent of the federal poverty level equal to the household size of the sponsor.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-45. Excluded income.

- 1. The following income must be excluded in determining eligibility for assistance:
 - a. All earned income of any child, except a minor parent, attending elementary or high school full time;
 - b. ~~Earned income of any child derived from a program carried out under the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.];~~
 - ~~c. Payments made to any member of the household under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [Pub. L. 91-646; 42 U.S.C. 4601 et seq.];~~
 - ~~d. Per capita payments made to members of Indian tribes under the Indian Tribal Judgment Funds Use and Distribution Act [25 U.S.C. 1407 et seq.], including all interest and investment income accrued on such funds while held in trust pursuant to a plan approved under the provisions of that Act pursuant to a plan approved by Congress prior to January 12, 1983, and any purchases made with such payments for so long as the payment is not commingled with other funds;~~
 - ~~e. Income derived from submarginal lands held in trust for Indians, to the extent required by Pub. L. 94-114 [25 U.S.C. 459e], for so long as the income is not commingled with other funds;~~
 - ~~f. Up to two thousand dollars per year of income received by an individual Indian derived from that Indian's interests in trust or restricted lands, as required by 25 U.S.C. 1408, for so long as the income is not commingled with other funds;~~
 - ~~g. A loan from any source that is subject to a written agreement requiring repayment by the recipient;~~
 - ~~h. Agent orange settlement payments;~~
 - ~~i. Payments made under the Radiation Exposure Compensation Act [Pub. L. 101-426; 104 Stat. 920; 42 U.S.C. 2210 (note) (1993 Supp.)], for so long as the payment is not commingled with other funds;~~
 - ~~j. The value of any supplemental food assistance received under the Child Nutrition Act of 1966, as amended [42 U.S.C. 1771 et seq.], and the special food service program for~~

~~children provided under the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.];~~

~~k. Payments received by any member of the household, from the child nutrition and food distribution unit of the North Dakota department of public instruction, in reimbursement of the cost of furnishing meals and snacks by any member of the household who provides child care in the home, provided that the child care provider is licensed under North Dakota Century Code chapter 50-11.1;~~

~~l. Income received as a housing allowance through any program sponsored by the United States department of housing and urban development and rent supplements or utility payments provided through the housing assistance program;~~

~~m. The value of surplus commodities provided through the United States department of agriculture;~~

~~n. Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides or senior companions, or to individuals serving in the service corps of retired executives, active corps of executives, and any other programs under title II of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 5001 et seq.];~~

~~o. Payments made to volunteers in service to America under title I of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4951 et seq.];~~

~~p. Any payment made as a result of the Alaska Native Claims Settlement Act, which is made tax exempt under Public Law 92-203 [43 U.S.C. 1601 et seq.];~~

~~q. The value of benefits received under the supplemental food program for women, infants, and children [Pub. L. 94-105; 42 U.S.C. 1786];~~

~~r.c.~~ The value of general assistance benefits provided in voucher form by any county agency, tribe, or the bureau of Indian affairs;

~~s.d.~~ Assistance payments from other programs, agencies, or organizations that:

(1) Do not serve the same purposes as the temporary assistance for needy families cash grant; or

(2) Provide goods or services that are not included in the standard of need;

~~t.e.~~ Scholarships, grants, stipends, and awards for educational purposes, which are given because of need or achievement by the bureau of Indian affairs, other federal sources, state sources, civic, fraternal, and alumni organizations, or relatives, to undergraduate-level and graduate-level students;

~~u.f.~~ Workstudy program income earned by an undergraduate-level or graduate-level student;

~~v.g.~~ Family subsidy program payments made by the department;

~~w.h.~~ Returned deposits from rentals and from utility companies;

~~x.i.~~ Adoption assistance and subsidized adoption payments;

~~y.j.~~ Foster care payments, subsidized guardianship payments, and payments received as a retainer for services as an emergency shelter foster home; and

~~z.k. Irregular cash gifts, which total, in any month, less than five hundred dollars per household received for a special occasion, such as Christmas, birthdays, or graduations;~~

~~aa. Any refund or federal income taxes received as an earned income tax credit pursuant to 26 U.S.C. 32, and any payments made by an employer as an advance payment of earned income tax credit pursuant to 26 U.S.C. 3507;~~

~~bb. Payments of education award money and living allowance moneys to an individual enrolled in AmeriCorps under the National and Community Service Act, as amended [42 U.S.C. 12571 et seq.]; and~~

~~cc. Crime victim compensation.~~

2. For purposes of this section, "child" means an individual:
 - a. Under age eighteen; or
 - b. Age eighteen and a full-time student in elementary or high school, or in an equivalent level of vocational or technical training, if, before attaining age nineteen, such student may reasonably be expected to complete the high school or vocational training curriculum.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; [January 1, 2017](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-51. Disregarded income.

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage household members to earn income.
2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the cash grant amount.
 - a. The greater of one hundred eighty dollars or twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard employment expense allowance. The amount remaining is net earned income.
 - b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
 - c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
 - (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income may be disregarded for six months beginning the month in which the earned income is first budgeted.
 - (2) If a recipient has earned income, at least thirty-five percent of the net earned income may be disregarded for months seven through nine beginning the month earned income is first budgeted.
 - (3) If a recipient has earned income, at least twenty-five percent of the net earned income may be disregarded for months ten through thirteen after the month earned income is first budgeted.

- (4) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the thirteenth month after the month earned income is first budgeted.
 - (5) Individuals that have received a full thirteen months of the incentive known as the time-limited percentage will not be eligible for this incentive again.
- d. An employed household member who receives an employment incentive disregard for a period of at least six consecutive months is provided employment incentive disregards of at least fifty percent for the first six months beginning the month in which the income is first budgeted, at least thirty-five percent for months seven through nine, at least twenty-five percent for months ten through thirteen, and none thereafter.
 - e. An employed household member who receives an employment incentive disregard for a period of less than six consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment was the first month income is budgeted retrospectively.
 - f. If an employed household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the household member was employed.
 - g. If any nondisregarded income remains, a health insurance premium, or paid child or spousal support, if applicable, may be disregarded.
 - h. If any nondisregarded income remains, child and dependent care costs that are employment-related or a combination of employment-related and education or training-related may be disregarded.
3. An income disregard is available only if the eligible employed individual previously received assistance, but has not completed the ~~twelve-month~~thirteen-month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:
 - a. No payment was made because the calculated cash grant was less than ten dollars; or
 - b. The household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle; ~~or~~
 - ~~c. The household failed, without good cause, to file a signed and completed monthly report form by the fifteenth day of the month in which the report was due.~~
 4. If, in any month, additional income received from a recurring source causes the household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
 5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-60. Computing payment if stepparent ~~or alien parent~~ income is deemed.

1. The amount of a household's cash grant must be reduced by the deemed income of a stepparent ~~or an alien parent~~ who lives in the home, but who is not a member of the household.
2. To encourage marriage among single-parent families and assist those families when the primary individual in a household marries, the income of the stepparent must be disregarded in determining the cash grant for the first six months, effective the month of the marriage. This subsection applies to recipients only, but not to applicants. No six-month disregard of stepparent income is allowed in situations when a primary individual marries before receiving benefits.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; [January 1, 2017](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

CHAPTER 75-02-02

75-02-02-03.2. Definitions.

For purposes of this chapter:

1. "Behavioral health service" means an evaluation, therapy, or testing service rendered by one of the following practitioners within their scope of practice: physician, licensed independent clinical social worker, psychologist, licensed addiction counselor, licensed associate professional counselor, licensed professional counselor, licensed professional clinical counselor, clinical nurse specialist, physician assistant, nurse practitioner, licensed social worker, licensed marriage and family therapist, or licensed certified social worker.
2. "Certification of need" means a regulatory review process that requires specific health care providers to obtain prior authorization for provision of services for medicaid applicants or eligible recipients under twenty-one years of age. Certification of need is a determination of the medical necessity of the proposed services as required for all applicants or recipients under the age of twenty-one prior to admission to a psychiatric hospital, an inpatient psychiatric program in a hospital, or a psychiatric facility, including a psychiatric residential treatment facility. The certification of need evaluates the individual's capacity to benefit from proposed services, the efficacy of proposed services, and consideration of the availability of less restrictive services to meet the individual's needs.
- ~~2-3.~~ "County agency" means the county social service board.
- ~~3-4.~~ "Department" means the North Dakota department of human services.
- ~~4-5.~~ "Drug use review board" means the board established pursuant to North Dakota Century Code chapter 50-24.6.
- ~~5-6.~~ "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for participation.
- ~~6-7.~~ "Licensed practitioner" means an individual other than a physician who is licensed or otherwise authorized by the state to provide health care services within the practitioner's scope of practice.
- ~~7-8.~~ "Medical emergency" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.
- ~~8-9.~~ "Medically necessary" includes only medical or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the patient's diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the patient or provider; not investigational, experimental, or unproven; clinically appropriate in terms of scope, duration, intensity, and site; and provided at the most appropriate level of service that is safe and effective.
- ~~9-10.~~ "Provider" means an individual, entity, or facility furnishing medical or remedial services or supplies pursuant to a provider agreement with the department.

~~40-11.~~ "Psychiatric residential treatment facility" is as defined in subsection 10 of section 75-03-17-01.

- ~~11. "Psychological service" means a psychological evaluation, therapy, or testing service rendered by a physician, licensed independent clinical social worker, psychologist, licensed addiction counselor, licensed associate professional counselor, licensed professional counselor, licensed professional clinical counselor, clinical nurse specialist, physician assistant, nurse practitioner, licensed social worker, or licensed certified social worker.~~
12. "Recipient" means an individual approved as eligible for medical assistance.
13. "Rehabilitative services" means any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
14. "Remedial services" includes those services, including rehabilitative services, which produce the maximum reduction in physical or mental disability and restoration of a recipient to the recipient's best possible functional level.
15. "Section 1931 group" includes individuals whose eligibility is based on the provisions of section 1931 of the Social Security Act [42 U.S.C. 1396u-1].

History: Effective May 1, 2000; amended effective August 29, 2000; November 1, 2001; September 1, 2003; October 1, 2012; April 1, 2016; [January 1, 2017](#).

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-01

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved medicaid state plan in effect at the time the service is rendered by providers. Services may include:
 - a. (1) Inpatient hospital services. "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - (2) Inpatient prospective payment system hospitals that are reimbursed by a diagnostic-related group will follow medicare guidelines for supplies and services included and excluded as outlined in 42 CFR 409.10.
 - b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency

hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.

- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Nursing facility services. "Nursing facility services" does not include services in an institution for mental diseases and means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.
- e. Intermediate care facility for individuals with intellectual disabilities services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as provided in chapter 75-04-01.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.
- g. Physician's services. "Physician's services" whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere means those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care other than physician's services recognized under state law and furnished by licensed practitioners within the scope of their practice as defined by state law.
- i. Home health care services. "Home health care services", in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in this section, means any of the

following items and services when they are provided, based on certification of need and a written plan of care by a licensed physician, to a patient in the patient's place of residence, excluding a residence that is a hospital or a skilled nursing facility:

- (1) Intermittent or part-time skilled nursing services furnished by a home health agency;
 - (2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician and under the supervision of a registered nurse, when a home health agency is not available to provide nursing services;
 - (3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and
 - (4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.
- j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.
- k. Private duty nursing services. "Private duty nursing services" means nursing services provided, based on certification of need and a written plan of care which is provided under the direction of a physician, by a registered nurse or a licensed practical nurse under the supervision of a registered nurse to a patient in the patient's own home.
- l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. Dental services reimbursed under 42 C.F.R. 440.90 may only be reimbursed if provided through a public or private nonprofit entity that provides dental services.
- m. Physical therapy. "Physical therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a patient by or under the supervision of a qualified physical therapist.
- n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a patient and given by or under the supervision of a qualified occupational therapist.
- o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a patient is referred by a physician or other licensed

practitioner of the healing arts within the scope of the practitioner's practice under state law.

- p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.
- q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:
 - (1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision;
 - (2) "Hearing aid" means a specialized orthotic device individually prescribed and fitted to correct or ameliorate a hearing disorder; and
 - (3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- r. Other diagnostic, screening, preventive, and rehabilitative services.
 - (1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.
 - (2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.
 - (3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
 - (4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the

existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.

- s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.
 - t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).
 - u. Personal care services. "Personal care services" means those services that assist an individual with activities of daily living and instrumental activities of daily living in order to maintain independence and self-reliance to the greatest degree possible.
 - v. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary of the United States' department of health and human services, including:
 - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.
 - (2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction of a physician or licensed practitioner of the healing arts within the scope of their practices as defined by state law. There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician or licensed practitioner and when it is not available to the patient from other sources.
 - w. An exercise program. "Exercise program" includes exercise regimens to achieve various improvements in physical fitness and health.
 - x. A weight loss program. "Weight loss program" includes programs designed for reduction in weight but does not include weight loss surgery.
 - y. A community paramedic service. "Community paramedic service" means a Medicaid-covered service rendered by a community paramedic, advanced emergency medical technician, or emergency medical technician. The care must be provided under the supervision of a physician or advanced practice registered nurse.
2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:
- a. Coverage may not be extended and payment may not be made for an exercise program or a weight loss program prescribed for eligible recipients.
 - b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.

- d. Coverage may not be extended and payment may not be made for any service provided to increase fertility or to evaluate or treat fertility.
- e. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to, and payment will only be made for, examinations and eyeglass replacements necessitated because of visual impairment.
- f. (1) Coverage may not be extended to and payment may not be made for any physician-administered drugs in an outpatient setting if the drug does not meet the requirements for a covered outpatient drug as outlined in section 1927 of the Social Security Act [42 U.S.C. 1396r-8].
(2) Payment for any physician-administered drugs in an outpatient setting will be the lesser of the provider's submitted charge, the Medicare allowed amount, or the pharmacy services allowed amount described in subdivision n.
- g. Coverage and payment for home health care services and private duty nursing services are limited to no more, on an average monthly basis, to the equivalent of one hundred seventy-five visits. The limit for private duty nursing is in combination with the limit for home health services. Services are limited to the home of the recipient.
 - (1) This limit may be exceeded in cases where it is determined there is a medical necessity for exceeding the limit and the department has approved a prior treatment authorization request.
 - (2) The prior authorization request must describe the medical necessity of the home health care services or private duty nursing services, and explain why less costly alternative treatment does not afford necessary medical care.
- h. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.
- i. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.
- j. Coverage for ambulance services must be in response to a medical emergency and may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department.
- k. Coverage for an emergency room must be made in response to a medical emergency and may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12.
- l. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twelve treatments for spinal manipulation services and two radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.
- m. Coverage and payment for personal care services:
 - (1) May not be made unless prior authorization is granted, and the recipient meets the criteria established in subsection 1 of section 75-02-02-09.5; and
 - (2) May be approved for:

- (a) Up to one hundred twenty hours per month, or at a daily rate;
 - (b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or
 - (c) Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.
- n. Coverage and payment for pharmacy services are limited to:
- (1) The lower of the estimated acquisition costs plus reasonable dispensing fees established by the department;
 - (2) The provider's usual and customary charges to the general public; or
 - (3) The federal upper limit or maximum allowable cost plus reasonable dispensing fees established by the department. For the department to meet the requirements of 42 CFR 447.331-447.333, pharmacy providers agree when enrolling as a provider to fully comply with any acquisition cost survey and any cost of dispensing survey completed for the department or centers for medicare and medicaid services. Pharmacy providers agree to provide all requested data to the department, centers for medicare and medicaid services, or their agents, to allow for calculation of estimated acquisition costs for drugs as well as estimated costs of dispensing. This data will include wholesaler invoices and pharmacy operational costs. Costs can include salaries, overhead, and primary wholesaler invoices if a wholesaler is partially or wholly owned by the pharmacy or parent company or has any other relationship to the pharmacy provider.
3. a. Except as provided in subdivision b, remedial services are covered services.
- b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.
4. a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.
- b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request. Provider requests for good cause consideration must be received within twelve months of the date the services or procedures were furnished.
- c. The department may refuse payment for any covered service or procedure provided to an individual eligible for both medicaid and other insurance if the insurance denies payment because of the failure of the provider or recipient to comply with the requirements of the other insurance.

5. A provider of medical services who provides a covered service except for personal care services, but fails to receive payment due to the requirements of subsection 4, and who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the requirements of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

6. Community paramedic services are limited to vaccinations, immunizations, and immunization administration.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010; July 1, 2012; October 1, 2012; July 1, 2014; April 1, 2016; January 1, 2017.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

75-02-02-09.1. Cost sharing.

1. Copayments provided for in this section may be imposed unless:
 - a. The recipient receiving the service:
 - (1) Is in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or any medical institution and is required to spend all income except for the recipient's personal needs allowance for the recipient's cost of care;
 - (2) Receives swing-bed services in a hospital;
 - (3) Has not reached the age of twenty-one years;
 - (4) Is pregnant;
 - (5) Is an Indian who is eligible to receive, is currently receiving, or who has ever received an item or service furnished by Indian health service providers or through referral under contract health services;
 - (6) Is terminally ill and is receiving hospice care;
 - (7) Is receiving medical assistance because of the state's election to extend coverage to eligible individuals receiving treatment for breast or cervical cancer; and
 - (8) Is an inmate, otherwise eligible for medical assistance, and is receiving qualifying inpatient services.
 - b. The service is:
 - (1) Emergency room services that are not elective or not urgent; or
 - (2) Family planning services.
2. Copayments are:
 - a. Seventy-five dollars for each inpatient hospital admission, including admissions to distinct part psychiatric and rehabilitation units of hospitals and excluding long-term hospitals;

- ~~b.~~ ~~Three dollars for each nonemergency visit to a hospital emergency room;~~
- ~~c.~~ Two dollars for each office visit for care by a physician, nurse practitioner, physician assistant, nurse midwife, clinical nurse specialist, optometrist, or chiropractor;
- ~~d.~~c. Three dollars for each office visit to a rural health clinic or federally qualified health center;
- ~~e.~~d. One dollar for each chiropractic manipulation of the spine;
- ~~f.~~e. Two dollars for each dental visit that includes an oral examination;
- ~~g.~~f. Three dollars for each brand name prescription filled;
- ~~h.~~g. Two dollars for each optometric visit that includes a vision examination;
- ~~i.~~h. Three dollars for each podiatric office visit;
- ~~j.~~i. Two dollars for each occupational therapy visit;
- ~~k.~~j. Two dollars for each physical therapy visit;
- ~~l.~~k. One dollar for each speech therapy visit;
- ~~m.~~l. Three dollars for each hearing aid dispensing service;
- ~~n.~~m. Two dollars for each audiology testing visit;
- ~~o.~~n. Two dollars for each ~~psychological~~behavioral health service visit; and
- ~~p.~~o. Two dollars for each licensed independent clinical social worker visit.

History: Effective January 1, 1997; amended effective November 8, 2002; September 1, 2003; July 1, 2006; July 1, 2012; October 1, 2012; April 1, 2016; January 1, 2017.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04

75-02-02-09.4. General limitations on amount, duration, and scope.

1. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:
 - a. Denied a prior treatment authorization request to provide the service;
 - b. Imposed a limit that has been exceeded;
 - c. Imposed a condition that has not been met;
 - d. Upon review under North Dakota Century Code chapter 50-24.1, determined that the service or supplies are not medically necessary.
2. Limitations on payment for occupational therapy, physical therapy, and speech therapy.
 - a. No payment will be made for occupational therapy evaluation except one per calendar year or for occupational therapy provided to ~~an individual~~individuals twenty-one years of age and older except for twenty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination with services delivered by independent occupational therapists and in

outpatient hospital settings. ~~This limit does not apply to school-based services for children.~~

- b. No payment will be made for physical therapy evaluation except one per calendar year or for physical therapy provided to ~~an individual~~ individuals twenty-one years of age and older except for fifteen visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination with services delivered by independent physical therapists and in outpatient hospital settings. ~~This limit does not apply to school-based services for children.~~
- c. No payment will be made for speech therapy evaluation except one per calendar year or for speech therapy provided to ~~an individual~~ individuals twenty-one years of age and older except for thirty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination with services delivered by independent speech therapists and in outpatient hospital settings. ~~This limit does not apply to school-based services for children.~~

3. Limitation on payment for eye services.

- a. No payment will be made for eyeglasses for individuals twenty-one years of age and older except for one pair of eyeglasses no more often than once every two years. No payment will be made for the repair or replacement of eyeglasses during the two-year period unless the provider has secured the prior approval of the department and the department has found that the repair or replacement is medically necessary.
- b. No payment will be made for refractive examinations for individuals twenty-one years of age and older except for one refractive examination no more often than every two years after an initial examination paid by the department unless the provider has secured the prior approval of the department.

4. Limitation on chiropractic services.

- a. No payment will be made for spinal manipulation treatment services except for twelve spinal manipulation treatment services per individual per calendar year unless the provider requests and receives the prior approval of the department.
- b. No payment will be made for radiologic examinations performed by a chiropractor except for two radiologic examinations per individual per year unless the provider requests and receives the prior approval of the department.

5. Limitation on behavioral health services.

~~a. No payment will be made for psychological therapy visits except for forty visits per individual per calendar year; ~~or.~~~~

~~b. No payment will be made for psychological evaluations except for one per calendar year; ~~or.~~~~

~~c. No payment will be made for psychological testing except for four units per calendar year ~~for services rendered by licensed independent clinical social workers, psychologists, licensed addiction counselors, licensed associate professional counselors, licensed professional counselors, licensed professional clinical counselors, licensed social workers, and licensed certified social workers unless the provider requests and receives the prior approval of the department. Limits in this subsection do not apply to services provided by staff employed by schools, residential child care facilities, treatment foster care providers, or human service centers.~~~~

Limitations in this subsection apply for services rendered by practitioners described in subsection 1 of section 75-02-02-03.2 with the exception of physicians, clinical nurse specialists, physician assistants, or nurse practitioners. Services in excess of the limits are not eligible for Medicaid payment unless the additional services are medically necessary and the provider requests and receives the prior approval of the department.

History: Effective September 1, 2003; amended effective July 1, 2006; July 1, 2009; October 1, 2012; April 1, 2016; [January 1, 2017](#).

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04

75-02-02-29. Primary care provider.

1. Payment may not be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:
 - a. Who are required by this subsection to select, but who have not selected, or have not had selected on their behalf, a primary care provider; or
 - b. By a provider who is not the primary care provider selected by or on behalf of the recipient or to whom the recipient has not been referred from the primary care provider.
2. A primary care provider must be selected by or on behalf of the members in the following medical assistance units:
 - a. The parents or caretaker relatives and their spouses of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, up to fifty-four percent of the federal poverty level.
 - b. For up to twelve months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relatives and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretakers lose coverage under the parents and caretaker relatives and their spouses category due to increased earned income or hours of employment.
 - c. For up to four months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relative and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretaker relatives lose coverage under the parents and caretaker relatives and their spouses category due to increased alimony or spousal support.
 - d. A pregnant woman up to one hundred forty-seven percent of the federal poverty level.
 - e. An eligible woman who applied for and was eligible for medicaid during pregnancy continues 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.
 - f. A child born to an eligible pregnant woman who applied for and was found eligible for medicaid on or before the day of the child's birth, for twelve months, beginning on the day of the child's birth and for the remaining days of the month in which the twelfth month falls.

- g. A child, not including a child in foster care, from birth through five years of age up to one hundred forty-seven percent of the federal poverty level.
 - h. A child, not including a child in foster care, from six through eighteen years of age, up to one hundred thirty-three percent of the federal poverty level.
 - i. A child, not including a child in foster care, from six through eighteen years of age who becomes medicaid eligible due to an increase in the medicaid income levels used to determine eligibility.
 - j. An individual who is not otherwise eligible for medicaid and who was in title IV-E funded, state-funded, or tribal foster care in this state under in the month the individual reaches eighteen years of age, through the month in which the individual reaches twenty-six years of age.
 - k. A pregnant woman who requires medical services and qualifies for medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred forty-seven percent of the federal poverty level.
 - l. A child less than nineteen years of age who requires medical services and qualifies for medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1- 41.1 and whose income is above one hundred seventy percent of the federal poverty level.
 - m. The parents and caretaker relatives and their spouses of a deprived child who require medical services and qualify for medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred thirty-three percent of the federal poverty level.
3. A physician, nurse practitioner, or physician assistant practicing in the following specialties, practices, or settings may be selected as a primary care provider:
- a. Family practice;
 - b. Internal medicine;
 - c. Obstetrics;
 - d. Pediatrics;
 - e. General practice;
 - f. A rural health clinic;
 - g. A federally qualified health center; or
 - h. An Indian health services clinic.
4. A recipient identified in subsection 2 need not select, or have selected on the recipient's behalf, a primary care provider if:
- a. The recipient is aged, blind, or disabled;
 - b. The period for which benefits are sought is prior to the date of application;
 - c. The recipient is receiving foster care or subsidized adoption benefits;
 - d. The recipient is receiving home and community-based services; or

- e. The recipient has been determined medically frail under section 75-02-02.1-14.1.
5. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care provider:
- a. Early and periodic screening, diagnosis, and treatment of recipients under age twenty-one;
 - b. Family planning services;
 - c. Certified nurse midwife services;
 - d. Optometric services;
 - e. Chiropractic services;
 - f. Dental services;
 - g. Orthodontic services provided as the result of a referral through the early and periodic screening, diagnosis, and treatment program;
 - h. Services provided by an intermediate care facility for the intellectually disabled;
 - i. Emergency services;
 - j. Transportation services;
 - k. Targeted case management services;
 - l. Home and community-based services;
 - m. Nursing facility services;
 - n. Prescribed drugs except as otherwise specified in section 75-02-02-27;
 - o. Psychiatric services;
 - p. Ophthalmic services;
 - q. Obstetrical services;
 - r. ~~Psychological~~Behavioral health services;
 - s. Ambulance services;
 - t. Immunizations;
 - u. Independent laboratory and radiology services;
 - v. Public health unit services; and
 - w. Personal care services.
6. Except as provided in subsection 4, or unless the department exempts the recipient, a primary care provider must be selected for each recipient.
7. A primary care provider may be changed during the ninety days after the recipient's initial enrollment with the primary care provider or the date the state sends the recipient notice of the enrollment, at redetermination of eligibility, once every twelve months during the open

enrollment period, or with good cause. Good cause for changing a primary care provider less than twelve months after the previous selection of a primary care provider exists if:

- a. The recipient relocates;
- b. Significant changes in the recipient's health require the selection of a primary care provider with a different specialty;
- c. The primary care provider relocates or is reassigned;
- d. The selected provider refuses to act as a primary care provider or refuses to continue to act as a primary care provider; or
- e. The department, or its agents, determines that a change of primary care provider is necessary.

History: Effective October 1, 2012; amended effective July 1, 2014; April 1, 2016; [January 1, 2017](#).

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-32; 42 USC 1396u-2

ARTICLE 75-04 DEVELOPMENTAL DISABILITIES

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CHAPTER 75-04-01 LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

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75-04-01-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
3. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
4. ~~"Case management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.~~
5. "Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through developmental disabilities ~~case~~program management, on whose behalf services are provided or purchased.
5. "Client representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities who has maintained significant contacts with the client.
6. "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group-living arrangement.
7. "Consumer" means an individual with developmental disabilities.
8. ~~"Day supports~~habilitation" means a day program to assist individuals in acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; ~~provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; and development of non-job task-oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety. Activities should focus on improving a client's sensory, motor, cognitive, communication, and social interaction skills.~~
- 8.9. "Department" means the North Dakota department of human services.

- ~~9.10.~~ "Developmental disability" means a severe, chronic disability of an individual which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the individual attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
 - e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic ~~care~~services, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

~~10.11.~~ ~~"Extended services~~Employment support" means ~~a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training; or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss, and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month~~ongoing supports to assist clients in maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.

~~12.~~ "Extended home health care" means a service that provides skilled nursing tasks that cannot be delegated to unlicensed personnel that is available when a client has exceeded the amount of service available under the Medicaid state plan.

~~13.~~ "Family care option III" means an individual support provided in a setting for adolescents or young adults who are unable to live in a family home setting.

~~14.~~ "Family member" means relatives of a client to the second degree of kinship.

~~11.15.~~ "Family support services" means a family-centered support service contracted ~~for a client~~ based on the client's or primary caregiver's need for support in meeting the health,

developmental, and safety needs ~~of the client in order for the client~~ to remain in an appropriate home environment.

16. "Generic service" means a service that is available to any member of the population and is not specific to meeting specialized needs of individuals with intellectual disabilities or developmental disabilities.

~~42.17.~~ "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.

~~43.18.~~ "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than ~~four~~two individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.

~~44.19.~~ "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.

20. "In-home support" means supports for a client residing with their primary caregiver and their family to prevent or delay unwanted out-of-home placement. Services may assist the client in activities of daily living, and help with maintaining health and safety.

~~45.21.~~ "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.

22. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.

~~46.23.~~ "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to ~~regulation under~~title 42-CFR, Code of Federal Regulations, parts 442 and 483, et seq.

~~47.24.~~ "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.

~~48.25.~~ "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.

~~19. "Mental retardation" means a diagnosis of the condition of mental retardation, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.~~

~~20.26.~~ "Minimally supervised living arrangements" means either:

- a. A group home with an available client adviser; or
- b. A community complex that provides self-contained rented units with an available client adviser.

27. "Person-centered service plan" means a plan that describes the individual's assessed needs, dreams, personal outcomes, and goals, and how the authorized services and natural supports

provided will assist the individual in achieving their outcomes and live safely and successfully in the community.

28. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.

29. "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider agency licensed pursuant to this chapter.

~~21.30.~~ "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.

31. "Program management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.

32. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.

~~22.33.~~ "Resident" means an individual receiving services provided through any licensed residential facility or service.

34. "Residential services" means services provided in an intermediate care facility for individuals with intellectual disabilities, individualized supported living arrangement, minimally supervised living arrangement, transitional community living facility, supported living arrangement, family care option III, or congregate care.

~~23.35.~~ "Standards" means requirements which result in accreditation by the council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for individuals with intellectual disabilities, or for ~~extended service~~individual employment supports results in accreditation by the commission on accreditation of rehabilitation facilities.

~~24.36.~~ "Supported living arrangement" means a program providing a variety of types of living arrangements that enable individuals with disabilities to have choice and options comparable to those available to the general population. Clients entering this service shall have the effects of any skill deficits subject to mitigation by the provision of individualized training and follow-along services.

~~25.37.~~ "Transitional community living facility" means a residence for clients with individualized programs consisting of social, community integration, and daily living skills development preliminary to entry into less restrictive settings.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-02. License required.

No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more

than ~~four~~two individuals with developmental disabilities without first having obtained a license from the department unless the facility is:

1. Exempted by ~~subsection 1 or 2 of~~ North Dakota Century Code section ~~15-59.3-02~~15.1-34-02; or
2. ~~A health care facility, as defined in North Dakota Century Code section 23-17.2-02, other than an intermediate care facility for individuals with intellectual disabilities; or~~
- ~~3.~~ Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

Licensure does not create an obligation for the state to purchase services from the licensed facility.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02

75-04-01-04. License denial, ~~suspension,~~ or revocation.

The department may deny a license to an applicant ~~or suspend~~ or revoke an existing license upon a finding of noncompliance with the rules of the department.

1. If the department denies a license, the applicant may not reapply for a license for a period of six months from the date of denial. After the six-month period has elapsed, the applicant may submit a new application to the department.
2. If the department revokes a license, the licensee may not reapply for a license for a period of one year from the date of the revocation. After the one-year period has elapsed, the licensee may submit a new application to the department.
3. A license denial or revocation may affect all or some of the services and facilities operated by a licensee, as determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-08

75-04-01-05. Notification ~~of denial, suspension, or revocation~~ of license.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, ~~suspend,~~ or revoke a license.
2. The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial, ~~suspension,~~ or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial, ~~suspension,~~ or revocation is final, and the procedure for appealing the action of the department.
3. The applicant or licensee may appeal the denial, ~~suspension,~~ or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten

days of receipt of the notice of intent to deny, ~~suspend~~, or revoke. The hearing must be governed by the provisions of chapter 75-01-03.

4. The licensee may continue to provide services until the final appeal decision is rendered. If clients have been removed from the licensed facility because of a health, welfare, or safety issue, they shall remain out of the facility while the appeal is pending.
5. The licensee, upon final revocation notification, shall return the license to the department immediately.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-08

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing body of the applicant, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department ~~any conviction of~~ that they have been found guilty of, pled guilty to, or pled no contest to a criminal offense.
2. The applicant or licensee shall conduct federal and state criminal background checks on all persons employed who work with clients, including volunteers. If the applicant or licensee is contracting or subcontracting with other entities, there must be an agreement ensuring federal and state criminal background checks have been completed on all persons employed who work with clients, including volunteers.
3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of ~~conviction~~ having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's organization of employees and volunteers with a criminal record.
4. Such disclosure must not disqualify the applicant from licensure or an individual from employment or volunteering, unless ~~the conviction having been found guilty of, pled guilty to, or pled no contest to~~ is for a crime having direct bearing on the capacity of the applicant, employee, or volunteer to provide a service under the provision of this chapter and/or the convicted individual applicant, employee, or volunteer is not sufficiently rehabilitated ~~under North Dakota Century Code section 12.1-33-02.1.~~
5. The department shall determine the effect of ~~a conviction of an~~ an applicant, employee, or volunteer having been found guilty of, pled guilty to, or pled no contest to a criminal offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

75-04-01-06.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ in any capacity that involves or permits contact between the employee or volunteer and any individual cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion if a class A misdemeanor or a felony; or~~ 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on

Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 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; 14-09-22, abuse of child; or 14-09-22.1, neglect of child; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
- 2. For purposes of subdivision b of subsection 1, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
- 3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of services to individuals with developmental disabilities.
- 4. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
- 5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; ~~or~~
 - c. Reported to the facility as the result of an employee background check; or
 - d. Discovered by the department.

History: Effective July 1, 2001; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-03.1

75-04-01-07. Content of license.

A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, the unique services authorized for provision by the licensee, and the expiration date of the license.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-05

75-04-01-08. Types of licenses.

1. A license issued pursuant to this chapter must be denominated "license"; or "provisional license"; ~~or "special provisional license"~~.
2. A "license" is unrestricted. The department shall issue a license to any applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and who is accredited by the accreditation council for services for individuals with disabilities, or for extended employment services accredited by the rehabilitation accreditation commission (CARF). The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.
3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.

~~—4.— A "special provisional license" may be issued subject to the provision of section 75-04-01-10.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-09. Provisional license.

1. A provisional license may be issued to an applicant or licensee with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules of the department and North Dakota Century Code section 25-16-03. A provisional license must not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of individuals with developmental disabilities, including fire safety requirements as evidenced in writing by the fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the applicant's or licensee's operations, or any violation that places a client's life in danger.
2. A provisional license may be issued for any or all services provided or facilities operated by an applicant or licensee as determined by the department.
- ~~3.~~ Upon a finding that the applicant or licensee is not in compliance ~~with the rules~~, the department ~~may~~shall notify the applicant or licensee, in writing, of its intent to issue a provisional license. The notice must provide the reasons for the action, the specific services that are affected by the provisional license, and ~~must~~ describe the corrective actions required of the applicant, ~~which, if taken, will result in the issuance of an unrestricted license or licensee.~~
- ~~3.4.~~ The applicant or licensee shall, within ten days of the receipt of notice under subsection ~~2.3~~, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant's or licensee's plan of correction and shall notify the licensees of their decision within thirty days. If the plan of correction is rejected, the department shall notify the applicant or licensee that the license has been denied or revoked. The department may conduct periodic inspection of the facilities and operations of the applicant or licensee to evaluate the implementation of a plan of correction.

5. The department will terminate a provisional license and issue an unrestricted license to the applicant or licensee upon successful completion of an accepted plan of correction, as determined by the department.

~~4-6.~~ A provisional license may be issued for any period not exceeding one year. A provisional license may be renewed for an additional six months only upon ~~successful completion of an accepted plan of correction~~ the department's determination that the applicant or licensee has made significant progress toward meeting the standards identified in the plan of correction or that the applicant or licensee has shown good cause for failure to implement the plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-10. Special provisional license.

Repealed effective January 1, 2017.

~~1. A licensee or applicant may submit an application, on a form provided, for a special provisional license, permitting the provision of a new service, the occupancy of a facility, or the vacation of a facility provided that:~~

~~a. The new service is in conformity with the service definitions of these rules or is a service designed by and recognized through policy issued by the developmental disabilities division of the department and, upon completion of the rule promulgation process, will be a service able to be licensed under this chapter; or~~

~~b. The issuance of the special provisional license is required by a natural disaster, calamity, fire, or other dire emergencies.~~

~~2. A special provisional license issued for this purpose must include the dates of issuance and expiration, a description of the service or facility authorized, an identification of the licensee to whom the special provisional license is issued, and any conditions required by the department.~~

~~**History:** Effective April 1, 1982; amended effective December 1, 1995.~~

~~**General Authority:** NDCC 25-16-06, 50-06-16~~

~~**Law Implemented:** NDCC 25-16-03~~

75-04-01-11. License renewal.

The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license. If the provider agency continues to meet all standards established by the rules under this chapter, the department shall issue a license renewal annually on the expiration date of the previous year's license.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-12. Display of license.

The licensee shall place any license, ~~provisional license~~, or ~~special~~ provisional license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-12.1. Provider agreement.

Licensees shall sign a Medicaid provider agreement and required addendums with the department to provide services to individuals with developmental disabilities.

History: Effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-13. Purchase of service or recognition of unlicensed entities.

The department ~~shall~~may not recognize or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions, ~~nor shall it.~~ The department may not purchase any service from such entities.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03

75-04-01-14. Unlicensed entities - Notification.

Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties ~~thereto~~ that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date ~~certain~~ when by which the application must be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure. The parties shall receive notification within seven days and the entity shall be required to submit a complete application to the department within thirty days of notice.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-16-02

75-04-01-15. Standards of the department.

The department herein adopts and makes a part of these rules for all licensees the current standards used for accreditation by the council on quality and leadership in supports for people with disabilities, additionally, for intermediate care facilities for individuals with intellectual disabilities, standards for certification under title 42-CFR, Code of Federal Regulations, parts 442 and 483 et seq., or for ~~extended service~~employment supports, by the rehabilitation accreditation commission (CARF). If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate ~~1999~~current standards of the council on quality and leadership in supports for people with disabilities. Infant development licensees who have attained accreditation status by the council on quality and leadership in supports for people with disabilities are not required to maintain accreditation status.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; May 1, 2006; July 1, 2012; [January 1, 2017](#).

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-17. Identification of basic services subject to licensure.

Services provided to ~~more than four individuals with developmental disabilities in treatment or care centers~~ eligible clients must be identified and licensed by the following titles:

1. ~~Residential services:~~

~~a. Individualized supported living arrangement;~~

~~b. Community intermediate care facility for individuals with intellectual disabilities of fifteen beds or less;~~

~~c. Institutional intermediate care facility for individuals with intellectual disabilities of sixteen or more beds;~~

~~d.~~ 2. Minimally supervised living arrangement;

~~e.~~ 3. Transitional community living facility;

~~f.~~ 4. Supported living arrangement;

~~g. Family support services; or~~

~~h.~~ 5. Congregate care;

6. Family care option III;

~~2.~~ 7. Day services:

~~a. Day supports;~~

~~b. Extended service; or~~

~~c. Infant development.~~ habilitation;

8. Intermediate care facility for individuals with intellectual disabilities;

9. Employment services:

a. Individual employment supports; or

b. Small group employment supports;

10. Prevocational services;

11. Family support services:

a. Parenting supports;

b. In-home supports;

c. Extended home health care; or

d. Family care option; or

12. Infant development services.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-20. Applicant guarantees and assurances.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each client ~~an individual program~~ a person-centered service plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees that each client, parent, guardian, or advocate receives written notice of the client's rights in the manner provided by North Dakota Century Code section 25-01.2-16;
 - c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
 - d. Guarantees the client the right to receive the services and supports included in his or her person-centered service plan in a timely manner to fully participate in the benefits of community living, the opportunity to vote, to worship, to interact socially, to freely communicate and receive guests, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-03, 25-01.2-04, and 25-01.2-05;
 - e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of ~~an individual program~~ person-centered service plan;
 - f. Guarantees the confidentiality of all client records;
 - g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to title 29-CFR, Code of Federal Regulations, part 525, et seq., that the client has the right to seek employment in integrated settings, that restrictions upon client access to money are subject to the provisions of ~~an individual program~~ a person-centered service plan, that assets managed by the applicant on behalf of the client inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;
 - h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;
 - i. Guarantees the client freedom from corporal punishment, ~~guarantees the client freedom from~~ imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;

- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to choose and refuse services, who provides the services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others;
- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees;
- n. Assures that residential services will coordinate with the developmental and remedial services outside the residential setting in which a client lives;
- o. Assures that adaptive equipment, where appropriate for toilet training, toileting, mobility, communication, or eating is provided in the service facility for use by individuals with multiple disabilities consistent with the person-centered service plan;
- p. Assures that all service staff demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;
- q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
- r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
- s. Assures that an annual inspection with a written report of safety program and practices is conducted in facilities providing day services;
- t. Guarantees that incidents of alleged abuse and neglect are thoroughly investigated and reported to the governing body, chief executive officer, parent, guardian or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the parent, guardian, or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and guarantees that corrective action plans are implemented;
- u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's parent or parents, guardian, or advocate the right to a fair hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance-;

- v. Assures that policies and procedures regarding admission to their services and termination of services are in conformance with the rules of the department;
- w. Assures that all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department; and
- x. Assures that all applicable federal and state laws and regulations are being abided by.

2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards ~~must be determined by the department.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-20.2. Recording and reporting abuse, neglect, and use of restraint.

1. Licensees shall implement policies and procedures to assure that incidents of alleged abuse ~~and~~, neglect, and restraints:
 - a. Are reported to the governing ~~board, administrator~~body, chief executive officer or designee of the provider agency, parent, guardian, advocate, and the protection and advocacy project;
 - b. Are thoroughly investigated, the findings reported to the governing ~~board~~body, chief executive officer or designee of the provider agency, parent, guardian, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and
 - c. Are immediately reported to the department.

~~2. Licensees shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of individuals with developmental disabilities.~~

~~3. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, requiring medical attention or hospitalization, endangering life, or result in a permanent disability must be recorded and reported to the ~~chairman of the governing board~~body, chief executive officer or designee of the provider agency and to the department immediately, and as soon thereafter as possible to the parent, guardian, or advocate.~~

~~4. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, which require extended hospitalization, endanger life, or result in a permanent disability, must also be immediately reported to the department.~~

History: Effective December 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06, 50-25.1-02

75-04-01-21. Legal status of applicant.

The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity;

2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States;
3. A current list of partners or members of the governing body and any advisory board with their address, telephone number, principal occupation, term of office, and status as a consumer or ~~consumer~~ client representative and any changes in this list since last submission;
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property;
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use, including director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities; and
6. The amount of any payments made to any member or members of the governing board of the applicant or board of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-22. Applicant's buildings.

Applicants occupying buildings, whether owned or leased, ~~must~~ shall provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter ~~15-59.3~~ 15.1-34 or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
 - 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. A statement prepared by a sanitarian or authorized public health officer, following an initial or subsequent annual inspection that the building's plumbing, water supply, sewer disposal, and food storage and handling meet acceptable standards to assure a healthy environment;
3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-24. Entry and inspection.

1. The applicant shall affirm the right of ~~duly authorized representatives of~~ the department, or designee, to enter any of the applicant's buildings or facilities and access to its records to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the provider agency unless the effectiveness of the inspection would be substantially diminished by prearrangement.
2. The provider agency shall authorize the department, or designee, entry to its facilities and access to its records in the event the provider agency declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-26. Denial of access to facilities and records.

Any applicant or licensee which denies the department, or designee, access, ~~by the authorized representative of the department, to a facility or records, for the purpose of determining the applicant's state of compliance with the rules of the department to a facility or its records,~~ shall have its license revoked or its application denied.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities must accommodate no more than two individuals.
2. Bedrooms in group home facilities must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms in group home facilities must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms in group home facilities must not have doors with vision panels and must ~~not~~ be capable of being locked from the inside of the bedroom, except where individuals may lock their own rooms as consistent with their programs when justified by a specific assessed need and documented in the person-centered service plan.
5. Bedrooms in group home facilities must provide furnishings which are appropriate to the psychological, emotional, and developmental needs of each individual. Each individual ~~shall~~ must be provided a separate bed of proper size and height, a clean comfortable mattress, bedding appropriate to the climate, and a place for personal belongings. Individual furniture,

such as a chest of drawers, table, or desk, and an individual closet with clothes racks and shelves must be provided. A mirror must be available to mobile individuals and a tilted mirror must be available to nonambulatory individuals.

6. Bedrooms in group home facilities must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.
7. Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-40. Documentation and data reporting requirements.

1. Licensee shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of, the provider agency.
2. The department may require a licensee to submit a statement of policies and procedures, and evidence of the implementation of the statement. In order to facilitate a determination that the licensee is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.
3. Licensee shall maintain program records, fiscal records, and supporting documentation, including:
 - a. Authorization from the department for each client for whom service is billed;
 - b. Attendance sheets and other records documenting the days and times that the clients received the billed services from the licensee; and
 - c. Records of all bills submitted to the department for payment.
4. Licensee shall report the results of designated quality and performance indicators, as requested by the department.
5. Licensee shall retain a copy of the records required for six years from the date of the bill unless an audit in process requires a longer retention.
6. The department maintains the right to withhold a payment for services or suspend or terminate Medicaid enrollment if the licensee has failed to abide by terms of the Medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

History: Effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

CHAPTER 75-04-02

PURCHASE OF SERVICE FOR ~~DEVELOPMENTALLY DISABLED PERSONS~~ INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Section

75-04-02-01	Purchase of Service
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75-04-02-18	Case <u>Program</u> Management

75-04-02-01. Purchase of service.

The department may purchase services only from licensed ~~providers~~ provider agencies in compliance with the requirements of this chapter.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-02. Fiscal requirement.

~~Providers~~ Provider agencies shall submit, no less than annually, a full financial disclosure including, but not limited to:

1. A statement of assets and liabilities-;
2. An operations statement-;
3. A statement disclosing contract income and client wages-;
4. A statement of client fees or payments and their distribution-, including private pay clients;
5. A statement showing the distribution of historical costs and a forecast of future costs-;
6. A statement of the assets and liabilities of any related organizations-;
7. Except for state-owned facilities and provider agencies that do not have an independent audit completed annually, a copy of an audited report of the provider agency's financial records from an independent certified public accountant. The audit must be conducted in accordance with generally accepted auditing standards. The information must be reconciled to each provider agency's statement of costs;

8. A statement of ownership for the provider agency, including the name, address, and proportion of ownership of each owner:
 - a. If a privately held or closely held corporation or partnership has an ownership interest in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the provider agency's statement of costs must be identified regardless of the proportion of ownership interest; or
 - b. If a publicly held corporation has an ownership interest of fifteen percent or more in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of fifteen percent or more;
9. Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the provider agency's facilities or a certification that the content of the document remains unchanged since the most recent statement given pursuant to this subsection;
10. Supplemental information reconciling the costs on the financial statements with costs on the statement of costs; and
11. The following information upon request by the department:
 - a. Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs;
 - b. Audited financial statements for any home or corporate office organization, excluding individual developmental disabilities provider agencies of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year; and
 - c. Audited financial statements for every organization that the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-06. Payments to related organizations restricted.

1. Payments, to related organizations, by the provider agency shall be limited to the actual and reasonable cost of the service received or the product purchased.
2. Financial transactions between the provider agency and the related organization shall be documented by the provider agency. The terms of such transactions shall be those which would be obtained by a prudent buyer negotiating at arms length with a willing and knowledgeable seller.

History: Effective April 1, 1982; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-07. Articles and bylaws of provider agency.

1. The articles, bylaws, or constitution of the provider agency shall identify ~~developmentally disabled persons~~individuals with developmental disabilities as eligible recipients of the ~~provider's~~provider agency's services and the provisions of those services as a purpose of the organization.
2. The articles, bylaws, or constitution of the provider agency shall authorize the governing board to enter into contracts, agreements, or any other arrangement to secure funds to provide services consistent with the ~~provider's~~provider agency's purpose.
3. The ~~provider's~~provider agency's dissolution provisions shall provide that the assets of the organization, which have been purchased, in whole or in part, with funds loaned or granted by the state or with the state's necessary approval, shall inure to the benefit of ~~developmentally disabled persons~~individuals with developmental disabilities and shall further provide that such assets shall be transferred subject to the approval of the department.

History: Effective April 1, 1982; amended effective August 1, 1984; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-08. ~~Providers~~Provider agencies policies and procedures.

The department may require a provider agency to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination that the provider agency is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-11. Access to provider agency premises and records.

The provider agency shall authorize the department's entry to its facilities and access to its records, in the event the provider agency declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties, for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-03, 25-16-10

75-04-02-12. Lobbying and political activity.

~~Providers~~Provider agencies shall not utilize funds provided by or through the department to support lobbying, political candidates, or political activity.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-13. Indemnification.

Contracting ~~providers~~provider agencies may be required to indemnify and reimburse the department for any federal funds, the expenditure of which is disallowed as a consequence of the

~~provider's~~ provider agency's failure to establish and maintain adequate records or the ~~provider's~~ provider agency's failure to otherwise comply with written standards, rules and regulations, or statutes.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-14. Grievance procedure.

1. ~~Providers~~ Provider agencies shall submit to the department, for review and approval, a copy of a grievance procedure, approved by the governing board, which affords the ~~developmentally disabled person~~ individual with developmental disabilities, or that person's parents, guardian, or advocate, a fair hearing of any complaint.
2. The provider agency shall maintain a record of all hearings provided pursuant to its grievance procedure, and shall note therein the complaint, persons complaining, and the resolution of the grievance.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-10

75-04-02-15. Property management and inventory.

1. The provider agency shall establish and maintain policies and procedures for the management and maintenance of property and equipment purchased or depreciated with state funds.
2. An inventory of property and equipment meeting the description of subsection 1 shall be separately maintained and identified by serial number and descriptions.
3. The provider agency shall make the records, and items identified in them, available for inspection by the department upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-16. Accounting for funds.

The provider agency shall establish and maintain financial records consistent with generally accepted accounting principles and the financial reporting requirements of the department.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-17. Rate of reimbursement.

1. The provider agency shall be reimbursed for services to ~~a developmentally disabled person~~ an individual with developmental disabilities on the basis of reasonable cost.
2. The rate of reimbursement shall be established pursuant to the applicable provisions of the manual for provider agency reimbursement of the department.
3. The applicant shall be subject to a financial audit pursuant to the provisions of the manual for provider agency reimbursement of the department.

4. The denial of access to financial records for audit purposes shall constitute a breach of a contract with the department.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-18. CaseProgram management.

ProvidersProvider agencies shall establish policies and procedures regarding admission to their services and termination of services in conformance with the North Dakota caseprogram management system.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-10

**CHAPTER 75-04-03
DEVELOPMENTAL DISABILITIES LOAN PROGRAM**

[Repealed effective January 1, 2017]

Section

- ~~75-04-03-01 — Definitions~~
- ~~75-04-03-02 — State and Federal Requirements~~
- ~~75-04-03-03 — Applicant Eligibility~~
- ~~75-04-03-04 — Location of Residential Facility~~
- ~~75-04-03-05 — Hazardous Areas [Repealed]~~
- ~~75-04-03-06 — Fire Protection [Repealed]~~
- ~~75-04-03-07 — Water Supply [Repealed]~~
- ~~75-04-03-08 — Sewage Disposal [Repealed]~~
- ~~75-04-03-09 — Residential Physical Plant~~
- ~~75-04-03-10 — Day Service Facilities~~
- ~~75-04-03-11 — Variance~~
- ~~75-04-03-12 — Financing~~
- ~~75-04-03-13 — Zoning~~
- ~~75-04-03-14 — Tax Exemption~~
- ~~75-04-03-15 — Facilities for the Chronically Mentally Ill~~
- ~~75-04-03-16 — Facilities for the Physically Handicapped~~
- ~~75-04-03-17 — Transfer and Assignment~~
- ~~75-04-03-18 — Reapplications~~

CHAPTER 75-04-05
REIMBURSEMENT FOR PROVIDERS PROVIDER AGENCIES OF SERVICES TO
INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Section	
75-04-05-01	Definitions
75-04-05-02	Eligibility for Reimbursement
75-04-05-03	Startup Costs [Repealed]
75-04-05-04	Application for Advancement of Startup Costs [Repealed]
75-04-05-05	Allowable Startup Costs [Repealed]
75-04-05-06	Reimbursement Requirements - Startup Costs [Repealed]
75-04-05-07	Grants-in-Aid [Repealed]
75-04-05-08	Financial Reporting Requirements
75-04-05-09	Rate Payments
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75-04-05-12	Adjustment to Cost and Cost Limitation
75-04-05-13	Nonallowable Costs
75-04-05-13.1	Allowable Bad Debt Expense
75-04-05-14	Profit-Motivated Entities - Return on Investment
75-04-05-15	Depreciation
75-04-05-16	Interest Expense
75-04-05-17	Related Organization
75-04-05-18	Rental Expense Paid to a Related Organization
75-04-05-19	Taxes
75-04-05-20	Personal Incidental Funds
75-04-05-21	Transfer, Discharge, and Expulsion of Clients
75-04-05-22	Staff-to-Client Ratios
75-04-05-23	Staff Hours
75-04-05-24	Application

75-04-05-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of **expenses****costs** in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for reimbursement through medicaid federal financial participation.
4. "Basic services" means all of the services that provider agencies deliver to clients, including nondevelopmental disabilities services.
5. "Board" means all food and dietary supply costs.
6. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used for client care.

- ~~5-7.~~ "Client" means eligible individuals with an individual found eligible as determined through the application of chapter 75-04-06 for services coordinated through developmental disabilities program management, on whose behalf services are provided or purchased.
- ~~6.~~ "Consumer" means an individual with developmental disabilities.
- ~~7.~~ "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities.
8. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. Community contribution does not include a donation to a charity.
- ~~9.~~ "Consumer" means an individual with developmental disabilities.
- ~~10.~~ "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a providership are divided for purposes of cost assignment and allocations.
- ~~9.11.~~ "Day supports habilitation" means a day program to assist individuals acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; development of non-job task-oriented prevocational skills such as compliance, attendance, task completion, problem-solving, and safety; and supervision for health and safety of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving a client's sensory, motor, cognitive, communication, and social interaction skills.
- ~~10.12.~~ "Department" means the North Dakota department of human services.
- ~~13.~~ "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~14.~~ "Depreciable asset" means a capital asset or other asset for which the cost must be capitalized for statement of costs purposes.
- ~~15.~~ "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in the most recently published "Estimated Useful Lives of Depreciable Hospital Assets".
- ~~14.16.~~ "Documentation" means the furnishing of written records including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
- ~~12.~~ "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training, or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.
- ~~17.~~ "Employment support" means ongoing supports to assist clients in maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job

employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.

~~13-18.~~ "Facility-based" means a workshop facility for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.

~~14-19.~~ "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.

~~15-20.~~ "Family support services" means a family-centered support service authorized for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.

21. "Fixed equipment" means equipment used for client care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

~~16-22.~~ "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.

23. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than two individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.

~~17-24.~~ "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.

~~18-25.~~ "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.

~~19-26.~~ "Individualized supported living arrangements" means a residential support services option in which services are authorized for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.

~~20-27.~~ "Interest" means the cost incurred with the use of borrowed funds.

28. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.

29. "Land improvements" means any improvement to the land surrounding the facility used for client care and identified as such in the depreciation guidelines.

~~21-30.~~ "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the ~~American hospital association~~ depreciation guidelines.

~~22-31.~~ "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.

32. "Nonfacility based" means a community-based service for individuals with developmental disabilities licensed by the department to provide day services.
33. "Other asset" means any asset that has a life of more than one year and has a cost of five thousand dollars or greater.
34. "Person-centered service plan" means a plan that describes the individual's assessed needs, dreams, personal outcomes, and goals, and how the authorized services and natural supports provided will assist the individual in achieving their outcomes and live safely and successfully in the community.
35. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
36. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
- ~~23.~~37. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
- ~~24.~~38. "Related organization" means an organization which a provider agency is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider agency. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
39. "Residential services" means services provided in an intermediate care facility for individuals with intellectual disabilities, individualized supported living arrangement, minimally supervised living arrangement, transitional community living facility, supported living arrangement, family care option III, or congregate care.
- ~~25.~~40. "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.
- ~~26.~~41. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
- ~~27.~~42. "Staff training" means an organized program to improve staff performance.
43. "Top management personnel" means owners; board members; corporate officers; general, regional, and district managers; administrators; and any other person performing functions ordinarily performed by such personnel.
- ~~28.~~44. "Units of service" for billing purposes means:
- a. (1) In residential ~~settings~~services, one ~~individual~~client served for one 24-hour day;
 - (2) In day ~~service~~settingshabilitation, prevocational services, employment services, one ~~individual~~client served for ~~one hour; and~~fifteen minutes; or

(3) ~~In extended services, one individual served for one hour of job coach intervention in in-home support settings, one client served for one hour.~~

- b. The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-02. Eligibility for reimbursement.

~~Providers~~Provider agencies of service are eligible for reimbursement for the costs of rendered services contingent upon the following:

1. The provider agency, other than a state-owned or state-operated provider agency, ~~holds, and is required to hold;~~ a current valid license; issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, the cost of which is subject to reimbursement.
2. The ~~provider's~~provider agency's clients have on file with the department a current individual service plan.
3. The provider agency has a current valid purchase of service agreement with the department authorizing the reimbursement.
4. The provider agency adopts and uses a system of accounting prescribed by the department.
5. The provider agency participates in the program audit and utilization review process established by the department.
6. The provider agency is in compliance with ~~chapter~~all documentation requirements in chapters 75-04-01 and 75-04-02.
7. ~~Providers~~Provider agencies, as a condition of eligibility for reimbursement for ~~the cost of services provided to~~ individuals with developmental disabilities, ~~must~~shall accept, as payment in full, sums paid in accordance with the final rate of reimbursement.
8. ~~Providers~~Provider agencies must obtain approval from the department for addition of square footage if the cost of the additional space is to be reimbursed by the department.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-08. Financial reporting requirements.

1. Records.

- a. The provider agency shall maintain on the premises the required census records and financial information sufficient to provide for a proper state and federal audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. If several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information ~~shall~~must be submitted for costs, undocumented at the reporting facility, with the cost report or provided prior to the audit

or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.

- c. Each provider agency shall maintain, for a period of not less than ~~five~~six years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit ~~shall~~must be retained until final resolution. Each provider agency shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Census records. Adequate census records for all consumers, regardless of payer source, must be prepared and maintained on a daily basis by the provider agency to allow for proper audit of the census data. The daily census records must include:

- a. Identification of the consumer;
- b. Entries for all days that services are offered, including the duration of service, and not just by exception; and
- c. Identification of type of day, i.e., hospital or in-house consumer day.

3. Accounting and reporting requirements.

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual in accordance with generally accepted accounting principles. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
- c. To properly facilitate auditing, the accounting system must be maintained in a manner that will allow cost accounts to be grouped by cost center and readily traceable to the cost report.
- d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The department will send a letter to a provider agency containing budget instructions one hundred twenty days prior to the start of the ~~provider's~~provider agency's fiscal year. The provider agency shall submit the statement of budgeted costs to the department within sixty days of the date of the letter consistent with the budget guidelines for establishing an interim rate in the subsequent year. The department shall issue the ~~provider's~~provider agency's interim rate within sixty days of the receipt of a ~~provider's~~provider agency's budget. ~~Providers~~Provider agencies must submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this subdivision, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadline described in this subsection is met, the department shall not count any day in which sufficient information has not been timely provided by a provider agency when the provider agency has shown good cause for its inability to provide the required information within the time periods prescribed in this subdivision.
- e. A cost report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate. The mailing of a cost report by registered mail, return receipt requested, will ensure documentation of the filing date.

- f. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, ~~could~~ may, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.

3.4. Auditing. In order to properly validate the accuracy and reasonableness of cost information reported by the provider agency, the department shall provide for audits as necessary.

- a. A provider agency shall submit its cost report ninety days from the last day of the ~~provider's~~ provider agency's fiscal year.
- b. A provider agency may request, and the department may grant, one thirty-day extension of the due date of the cost report for good cause. If an extension is granted, no penalty will apply during the extension period. The grant of a thirty-day extension does not extend the implementation of the penalty as described in subdivision a of subsection 4.5 if the cost report is not received by the extended due date.
- c. The preliminary audit report shall be submitted to the provider agency no later than twelve months after the department receives the ~~provider's~~ provider agency's cost report.
- d. The provider ~~shall~~ agency may submit a preliminary response to the preliminary audit report to the department within forty-five days of receipt of the preliminary audit report.
- e. The final audit report shall be submitted to the provider agency within ninety days of the department's receipt of the preliminary response.
- f. ~~Providers must~~ Provider agencies shall submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this ~~subdivision~~ subsection, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadlines described in subdivision c, d, or e have been met, the department ~~shall~~ may not count any day ~~in which~~ that sufficient information has not been timely provided by a provider agency when the provider agency has shown good cause for its inability to provide the required information within the time periods prescribed in any one of those subdivisions.

4.5. Penalties.

- a. If a provider agency fails to file its cost report on or before the due date, the department shall assess against the provider agency a nonrefundable penalty of one percent of one-twelfth of final allowable costs for each month in which the cost report was not timely filed. Final allowable costs means a program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations for the cost report year being reported.
- b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a ~~provider's~~ provider agency's administrative costs for the period of deficiency if:
 - (1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.
 - (2) After identification and notification through a previous audit, a provider agency continues to list items exempted in audit as allowable costs on the cost report.

- c. Penalties may be separately imposed for each violation.
- d. No penalty may be waived by the department except those described in subdivision b and only then upon a showing of good cause.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; [January 1, 2017](#).

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~[25-18-03](#), 50-24.1-01

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for individuals with intellectual disabilities, payment rates will be established for training, room, and board.
2. Interim rates based on factors including budgeted data, as approved, will be used for payment of services during the year.
3. Room and board charges to clients may not exceed the maximum supplemental security income payment less ~~twenty-five~~[one hundred](#) dollars for the personal incidental ~~expenses~~[costs](#) of the client, plus the average dollar value of food stamps to the eligible clientele in the facility. If the interim room and board rate exceeds the final room and board rate, the provider [agency](#) shall reimburse clients in a manner approved by the department.
4. In residential facilities where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients ~~will be~~[are](#) established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual clients or the facility, room and board rates ~~will be~~[are](#) reduced to reflect the average annual dollar value of the energy assistance program benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of [title 29-CFR, Code of Federal Regulations, part 525](#).
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. A provider [agency](#) may not solicit or receive a payment from a client or any other individual to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
10. The department will determine interim and final rates of reimbursement for continuing contract ~~providers~~[provider agencies](#) based upon cost data from the:
 - a. Submission requirements of section 75-04-05-02; and
 - b. Field and desk audits.
11. The department shall base rates of continuing service ~~providers~~[provider agencies](#), except for those identified in subdivision f of subsection 3 of section 75-04-05-10, on the following:

- a. For rates for continuing contract ~~providers~~provider agencies, who have had no increase in the number of clients the provider agency is licensed to serve: ninety-five percent of the rated occupancy established by the department, or actual occupancy, whichever is greater.
 - b. For rates for continuing service ~~providers~~provider agencies who have an increase in the number of clients the provider agency is licensed to serve in an existing service:
 - (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and
 - (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.
 - c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the ~~provider implemented~~provider agency implemented cost-containment measures consistent with the decrease in units, or when it determines that the ~~provider's~~provider agency's implementation of cost-containment measures consistent with the decrease in units would have imposed a detriment to the well-being of its clients.
 - (1) Acceptable cost-containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefit costs for the day service or group home proportionate to the decrease in units.
 - (2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.
12. Adjustments and appeal procedures are as follows:
- a. A rate adjustment may be made to correct an error.
 - b. A final adjustment will be made for a facility that has terminated participation in the program.
 - c. A provider agency may submit a request for reconsideration of the rate in writing to the ~~disability services~~developmental disabilities division within fifteen ~~calendar~~-days of the date of the final rate notification. A request for reconsideration must provide new evidence indicating why a new determination should be made or explain how the department has incorrectly interpreted the law. The department shall respond to a properly submitted request for reconsideration within ninety ~~calendar~~-days of receipt of the request. The department may redetermine a rate on its own motion.
 - d. ~~If a provider is dissatisfied with the decision resulting from the request for reconsideration, the~~A provider agency may appeal the decision within thirty days after the department mails the written notice of the decision ~~resulting from the~~on a request for reconsideration of the final rate.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-10. Reimbursement.

Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. **Providers**Provider agencies are required to submit a statement of budgeted costs to the department no less than annually so an interim rate may be determined. The determination of a final rate for all services begins with the reported cost of the **provider's**provider agency's operations for that fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
 - a. Settlements will be made through a recoupment or refund to the department for an overpayment or an additional payment to the provider agency for an underpayment.
 - b. Interprovider settlements between intermediate care facilities for individuals with intellectual disabilities and day services will be made through a recoupment or refund to the department from the day service provider agency to correct an overpayment; or a payout to the intermediate care facilities for individuals with intellectual disabilities, for the day service provider agency, to correct an underpayment.
3. Limitations.
 - a. The department shall accumulate and analyze statistics on costs incurred by **providers**provider agencies. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.
 - b. **Providers**Provider agencies, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider agency shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agency agreement. The provider agency, within ten days of such notification, must demonstrate to the satisfaction of the department that the department should not invoke its authority under this provision, or must accept the department's finding.
 - c. **Providers**Provider agencies shall not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
 - d. **Providers**Provider agencies of residential services must offer services to each client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. **Providers**Provider agencies may not be reimbursed for those days in which services are not offered to clients.
 - e. **Providers**Provider agencies of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty-one days must be offered. The budgeted units of

service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.

- f. Services exempted from the application of subdivisions d and e are:
 - (1) Emergency services.
 - (2) Family subsidy.
 - (3) Supported living.
- g. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per client. A reduction of payment to the provider agency in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.
- (2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the client, will be counted toward meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
 - (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
 - (2) Comparable salaries and benefits for comparable positions in state government;
 - (3) Comparable salaries and benefits for comparable positions in the community served by the provider agency; or
 - (4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, ~~providers~~provider agencies may establish higher salaries and benefit levels than those established by the department.
- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; July 1, 2001; July 1, 2010; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-11. Cost report.

- 1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. When costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. When costs are incurred jointly for two or more basic services, and not able to be directly assigned, the costs ~~will~~must be allocated as follows:
 - a. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff-to-client ratios by the department. Time studies may be performed for one week at least quarterly for

allocation. When no time studies exist, the applicable units must be used for allocation. When there is no definition of a unit of service, the department ~~will~~must use the unit of service for billing purposes for residential settings.

- b. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid ~~will be~~are excluded.
 - c. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic ~~services~~services based on usage or applicable units.
 - d. Real property ~~expense~~cost. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. When multiple usage of direct use area occurs, the allocation ~~will~~is first ~~be~~ done by square footage and then by applicable units.
 - e. Travel. The total of all unassigned travel costs must be included in administrative costs.
 - f. Supplies. The total of all unassigned supply costs must be included with administrative costs.
 - g. Food services. The total of all food costs ~~should~~must be allocated based on meals served. When the number of meals served has not been identified, applicable units must be used.
 - h. Insurance and bonds. The total of all such costs, except insurance costs representing real property ~~expense~~costs or vehicle insurance costs applicable to vehicles used for one or more basic services, must be included as administrative costs.
 - i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
 - j. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, and board, supported living arrangements, family support services, and extended services based on actual units of service. When determining the day support ratio of general client costs, total day support units will be divided by eight and rounded to the nearest whole number.
 - k. Administrative costs. Total administrative expenses may be allocated to all service categories, on time studies done in compliance with subdivision a. If time studies are not available, total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.
2. Identification of the means of financing is to be as follows:
- a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the ~~provider's~~provider agency's estimate of state financial participation.
 - b. Revenues must be distributed on the appropriate budget report by program. When private contributions are used to supplement or enrich services, the sum may be distributed accordingly. When contributions are held in reserve for special purposes, it may be described by narrative.

- c. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
- d. State financial participation in the habilitative costs associated with day supports shall not include production costs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; [January 1, 2017](#).

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~[25-18-03](#), 50-24.1-01

75-04-05-12. Adjustment to cost and cost limitation.

1. ~~Providers~~[Provider agencies](#) under contract with the department to provide services to individuals with developmental disabilities must submit to the department, no less than annually, a statement of actual costs on the cost report.
2. ~~Providers must~~[Provider agencies shall](#) disclose all costs and all revenues.
3. ~~Providers must~~[Provider agencies shall](#) identify income to offset costs when applicable in order that state financial participation not supplant or duplicate other funding sources. Income must be offset up to the total of appropriate allowable costs. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. These sources, and the cost to be offset, must include the following:
 - a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.
 - b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
 - c. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
 - d. Telephone and ~~telegraph~~[internet](#) income from ~~clients~~[consumers](#), staff, or guests, cost of the service.
 - e. Rental assistance or subsidy when not reported as third-party income, total costs.
 - f. Interest or investment income, interest expense.
 - g. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
 - h. Respite care income when received for a reserved bed, room, board, and staff costs.
 - i. Other income to the provider [agency](#) from local, state, or federal units of government may be determined by the department to be an offset to cost.
4. Payments to a provider [agency](#) by its vendor ~~will be~~[are](#) considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider [agency](#) and the vendor. However, such payments may represent a true donation or grant, and as such may not be offset against costs. Examples include when:

- a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
 - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider agency and the vendor.
 - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.
 - d. The contributor is not engaged in business with the provider agency or a facility related to the provider agency.
5. If an owner or other official of a provider agency directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the ~~provider's~~ provider agency's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the ~~provider's~~ provider agency's costs for goods or services purchased from the vendor.
 6. If the purchasing function for a provider agency is performed by a central unit or organization, all discounts, allowances, refunds, and rebates ~~should~~ must be credited to the costs of the provider agency in accordance with the instructions above. These ~~should~~ may not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
 7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They ~~should~~ must be used to reduce the specific costs to which they apply. If possible, they ~~should~~ must accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.
 - a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
 - b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
 - c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
 - d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that they are based on the dollar value of purchases, not the quantity of purchases.
 - e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

History: Effective July 1, 1984; amended effective June 1, 1995; July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-13. Nonallowable costs.

Nonallowable costs include:

1. Advertising designed to encourage potential consumers to select a particular provider agency.
2. Amortization of noncompetitive agreements.
3. Bad debt expense except as provided in section 75-04-05-13.1.
4. Barber and beautician services.
5. Basic research.
6. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid per day to a member of the legislative council pursuant to North Dakota Century Code section 54-35-10.
7. Concession and vending machine costs.
8. Contributions or charitable donations.
9. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
10. Costs for which payment is available from another primary third-party payor or for which the department determines that payment may lawfully be demanded from any source.
11. Costs of functions performed by clients in a residential setting which are typical of functions of any individual living in the individual's own home, such as keeping the home sanitary, performing ordinary chores, lawn mowing, laundry, cooking, and dishwashing. These activities shall be an integral element of ~~an individual program~~ person-centered service plan consistent with the client's level of function.
12. Costs of donations or memberships in sports, health, fraternal, or social clubs or organizations, such as Elks, YMCA, or country clubs.
13. Costs, including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to the vendor.
14. Costs incurred by the ~~provider's~~ provider agency's subcontractors, or by the lessor of property which the provider agency leases, and which becomes an element in the subcontractor's or lessor's charge to the provider agency, if such costs would not have been allowable under this section had they been incurred by a provider agency directly furnishing the subcontracted services, or owning the leased property.
15. Costs exceeding the approved budget unless the written prior approval of the department has been received.
16. Depreciation on assets acquired with federal or state grants.
17. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child student with disabilities" by ~~subsection 2 of~~ North Dakota Century Code ~~section 15-59-01~~ chapter 15.1-32, who is enrolled in a school district pursuant to an interdepartmental plan of transition.

18. Employee benefits not offered to all full-time employees.
19. Entertainment costs, including activities.
20. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
21. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense ~~shall~~may not be limited by this subsection.
22. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, such as Lions, chamber of commerce, Kiwanis, in excess of one thousand five hundred dollars per cost reporting period.
23. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long-term care insurance, dental, vision, life, education costs as described in subsection 33, and the cost of a ~~provider's~~provider agency's unrecovered cost of medical services rendered to an employee. The provider agency must receive written prior approval of the department before including any other benefits.
24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
25. Funeral and cemetery expenses.
26. Goodwill.
27. Home office costs when unallowable if incurred by facilities in a chain organization.
28. Travel not directly related to industry conferences, state or federally sponsored activities, or client services.
29. Interest cost related to money borrowed for funding depreciation.
30. Items or services, such as telephone, television, and radio, located in a client's room and furnished primarily for the convenience of the clients.
31. ~~Key man~~Top management personnel insurance.
32. Laboratory salaries and supplies.
33. The cost of education unless:
 - a. The education was provided by an accredited academic or technical educational facility;
 - b. The expenses were for materials, books, or tuition;
 - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility and is in ~~the~~a position; and
 - d. The facility claims the cost of the education at a rate that does not exceed one dollar and twenty-five cents per hour of work performed by the employee in the position for which

the employee received education at the ~~provider's expense~~ provider agency's cost provided the amount claimed per employee may not exceed two thousand five hundred dollars per year or an aggregate of ten thousand dollars per employee and in any event may not exceed the cost to the facility of the employee's education.

34. Meals and food service in day service programs.
35. Membership fees or dues for professional organizations exceeding three thousand dollars in any fiscal year.
36. Miscellaneous expenses not related to client services.
37.
 - a. Except as provided in subdivisions b, c, and d, payments to a member of the governing board of the provider agency, a member of the governing board of a related organization, or a family member of a member of those governing boards, including a spouse and an individual in the following relationship to a member or to a spouse of a member: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, ~~half brother, half sister~~ half-brother, half-sister, stepbrother, and stepsister.
 - b. Payments made to a member of the governing board of the provider agency to reimburse that member for allowable expenses incurred by that member in the conduct of the ~~provider's~~ provider agency's business may be allowed.
 - c. Payments for a service or product unavailable from another source at a lower cost may be allowed.
 - d. Wages allowed are limited to those wages paid to a family member of a member of the board and the amount must be consistent with wages paid to anyone else who would hold the same or similar position and the position is such that if the family member were not to hold the position, the provider agency would hire someone else to do the job.
38. Penalties, fines, and related interest and bank charges other than regular service charges.
39. Personal purchases.
40. Pharmacy salaries.
41. Physician and dentist salaries.
42.
 - a. For facility-based day ~~supports~~ habilitation programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified.
 - b. For non-facility-based day ~~supports~~ habilitation programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified, square footage, and equipment.
 - c. For ~~extended services~~ employment supports, in addition to subdivisions a and b, costs of employing clients, including preproduction and postproduction costs for supplies, materials, property, and equipment, and property costs other than an office, office supplies, and equipment for the supervisor, job coach, and support staff.
 - d. Total production-related legal fees in excess of five thousand dollars in any fiscal period.
43. Religious salaries, space, and supplies.
44. Room and board costs in residential services other than an intermediate care facility for individuals with intellectual disabilities.

45. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but when an election has been made to not participate in appropriate training approved by the department.
46. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
47. Travel of clients visiting relatives or acquaintances in or out of state.
48. Mileage reimbursement in excess of the standard mileage rate established by the state of North Dakota and meal reimbursement in excess of rates established by the general services administration for the destination city.
49. Undocumented expenditures.
50. Value of donated goods or services.
51. Vehicle and aircraft costs not directly related to provider agency business or client services.
52. X-ray salaries and supplies.
53. Alcohol and tobacco products.
54. Political contributions.
55. Salaries or costs of a lobbyist.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-13.1. Allowable bad debt expense.

1. Bad debts for charges incurred in or after July 1, 2005, and fees paid for the collections of those bad debts are allowable only as provided in this section.
2. A bad debt expense must result from nonpayment of the payment rate for an individual who is no longer receiving services from the provider agency claiming the bad debt expense.
3. The provider agency must provide documentation to the department which verifies that the provider agency made reasonable collection efforts, the debt could not be collected, and there is no likelihood of future recovery. Reasonable collection efforts include maintaining written documentation that, in making those collection efforts, the provider agency received the assistance of an attorney licensed to practice law.
4. In no circumstance may the allowable expense for the collection fee exceed the amount of the bad debt.
5. A bad debt expense shall not be allowed when it resulted from the ~~provider's~~provider agency's failure to comply with any applicable laws or regulations.
6. Before any bad debt expense may be allowed, the provider agency must have a written policy that limits the potential for bad debts and the provider agency must provide written documentation that shows it has taken action to limit bad debts for individuals who refuse to or cannot make payments.

7. Allowable bad debt expense may not exceed debt associated with one hundred twenty days of services provided for any one individual.
8. Payments on outstanding accounts receivable shall be applied to the oldest invoices for covered services first, and then all subsequent charges until the balance is paid in full.
9. Allowable finance charges on bad debts described in this section are allowable only if the finance charges have been offset as interest income.

History: Effective May 1, 2006; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-16-10, 50-24.1-01

75-04-05-15. Depreciation.

1. The principles of reimbursement for provider agency costs require that payment for services include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider agency, but are in use at the time the provider agency enters the program. The useful lives of these assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. 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. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.
3. Depreciation methods:
 - a. A provider agency shall use the straight-line method of depreciation. 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. A provider agency shall apply the method and procedure for computing depreciation on a basis consistent from year to year and shall maintain detailed schedules of individual assets. If the books of account reflect depreciation different than that submitted on the cost report, a provider agency shall prepare a reconciliation.
 - b. For all assets obtained prior to August 1, 1997, a provider agency shall compute depreciation using a useful life of ten years for all items except vehicles, which must be depreciated over four years, and buildings, which must be depreciated over twenty-five years or more. For assets other than vehicles and buildings obtained after August 1, 1997, a provider agency may use the ~~American hospital association depreciation guidelines as published by the American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2008 edition,~~ to determine the useful life or the composite useful life of ten years. ~~A provider may not use an option other than the useful life methodology the provider initially chooses to use without the department's prior written approval.~~ A provider agency shall use a useful life of ten years for all equipment not identified in the ~~American hospital association~~ depreciation guidelines.
 - c. A provider agency 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) A composite remaining useful life for movable equipment, determined from the seller's records; or
 - (b) The remaining useful life for movable equipment, determined from the seller's records.
4. Acquisitions are treated as follows:
- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least five thousand dollars, its cost must be capitalized and depreciated in accordance with subdivision b of subsection 3. A provider agency shall capitalize as part of the cost of the asset, costs incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest.
 - b. A provider agency shall capitalize major repair and maintenance costs on equipment or buildings if they exceed five thousand dollars per project and will be depreciated in accordance with subdivision b of subsection 3.
5. A provider agency shall maintain records that provide accountability for the fixed capital assets and other assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.
6. The basis for depreciation is the lower of the purchase price or fair market value at the time of purchase.

If the ~~provider's~~provider agency's cash payment for a purchase is reduced by a trade-in, fair market value will consist of the sum of the book value of the trade-in plus the cash paid.

7. For depreciation and reimbursement purposes, a provider agency may record and depreciate donated depreciable assets based on the asset's fair market value. If the ~~provider's~~provider agency's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.
8. Provision for increased costs due to the sale of a facility may not be made.

~~9. If a provider finances a facility pursuant to North Dakota Century Code chapter 6-09.6, the provider, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principal payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.~~

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2004; May 1, 2006; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10, 25-16-15~~25-18-03, 50-24.1-01

75-04-05-16. Interest expense.

1. In general:
 - a. To be allowable under the program, interest must be:
 - (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;

- (2) Identifiable in the ~~provider's~~ provider agency's accounting records;
 - (3) Related to the reporting period in which the costs are incurred;
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the ~~provider's~~ provider agency's facilities used therein;
 - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
 - (6) When borrowed for the purpose of making capital expenditures for assets that were owned by any other facility or service provider agency on or after July 18, 1984, limited to that amount of interest cost which such facility or service provider agency may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
- b. In cases when it was necessary to issue bonds for financing, any bond premium or discount ~~shall~~ must be accounted for and written off over the life of the bond issue.
2. Interest paid by the provider agency to partners, stockholders, or related organizations of the provider agency is not allowable as a cost ~~except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.~~
 3. A provider agency may combine or "pool" various funds in order to maximize the return on investment. If funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
 4. Funded depreciation requirements are as follows:
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.
 - b. The deposits are, in effect, made from the cash generated by the noncash expense depreciation and do not include interest income. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense.
 - c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
 - d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis.

- e. The provider agency may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of five thousand dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-17. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider agency by a related organization shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. ~~Providers~~Provider agencies must identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations must be submitted with the cost report. For cost reporting purposes, management fees ~~will be~~are considered administrative costs.
2. A chain organization consists of a group of two or more service ~~providers~~provider agencies which are owned, leased, or through any other device, controlled by one business entity.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider agency in itself, it may furnish to the individual provider agency, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the ~~provider's~~provider agency's allowable costs under the program. Any services provided by the home office which are included in cost as payments to an outside provider agency will be considered a duplication of costs and not be allowed.
4. If the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.
5. Payments to related organizations by the provider agency are limited to the actual and reasonable cost of the service received or the product purchased.
6. Provider agency shall document financial transactions between the provider agency and the related organization. The terms of such transactions must be similar as those obtained by a prudent buyer negotiating at arm's length with a willing and knowledgeable seller.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-18. Rental expense paid to a related organization.

1. A provider agency may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider agency

is not allowable as a cost, ~~except for providers subject to chapter 75-04-03, whose~~ Provider agency's rent payments shall not exceed the actual cost of mortgage payments of principal and interest. The cost of ownership of the facility would, however, be an allowable cost to the provider agency. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other property expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider agency. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider agency.

2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual ~~providers~~ provider agencies and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services and the allocation method used must be available to substantiate the reasonableness of the cost.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-19. Taxes.

1. **General.** Taxes assessed against the provider agency, in accordance with the levying enactments of the several states and lower levels of government and for which the provider agency is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
2. **Taxes not allowable as costs.** The following taxes are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
 - d. Taxes from which exemptions are available to the provider agency.
 - e. Taxes on property which is not used in the provision of covered services.
 - f. Taxes, including sales taxes levied against residents and collected and remitted by the provider agency.
 - g. Self-employment (FICA) taxes applicable to persons, including individual proprietors, partners, or members of a joint venture.

History: Effective July 1, 1984; amended effective July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-20. Personal incidental funds.

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the client's cost of care. Generally, the

source of income for personal needs is from social security, veterans' benefits, private income, economic assistance, or supplemental security income.

2. ~~Providers~~Provider agencies managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department may conduct audits of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a guardian or declaration of incompetency.
5. The department uses the amount of a client's income to determine:
 - a. Eligibility for medical assistance benefits.
 - b. Amount of income and other resources which must be applied toward the client's care.
 - c. Amount of income and other resources which can be retained by the client.
6. The following personal incidental items, supplies, or services furnished as needed or at the request of the client may be paid for by the client from the client's personal incidental allowance or by outside sources, such as relatives and friends:
 - a. Outside barber and beautician services, if requested by the client for regular shaves, haircuts, etc.
 - b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
 - c. Drycleaning of personal clothing.
 - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the client desires for the client's personal use.
 - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand-controlled, if needed by client, recommended by the client's attending physician, and if no other payment resource is available.
 - f. Personal clothing, including robes, pajamas, and nightgowns, except for clothing at distinct parts of the state institution for individuals with developmental disabilities certified as intermediate care facilities for individuals with intellectual disabilities, when the ownership of the clothing is retained by the facility or the clothing is included as a part of the individual's plan of care.
 - g. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, internet, and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with minerals may be paid when ordered by the attending physician and the client, ~~parent, or~~ guardian, ~~or responsible relative~~ approves such use of the client's funds.
7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the facility

for all clients receiving these items or services directly from the program. All such charges must be for direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.

8. A client's private property must be clearly marked by name. The facility must keep a record of private property. If items are lost, the circumstances of disappearance must be documented in the facility's records.
9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable client's accounts.
10. A client's funds on deposit with the facility must be available to a client on the client's request. No funds may be withdrawn from accounts of a client capable of managing the client's own funds without the client's permission.
11. Should a disagreement exist as to whether a client is capable of managing the client's own funds, a joint determination will be made by the ~~individual~~ person-centered service plan team; ~~parent, and guardian, or responsible relative~~ in settling this dispute. The decision must be documented in the ~~provider's~~ provider agency's records.
12. On discharge, the facility must provide the client with a final accounting of personal funds and remit any balance on deposit with the facility.
13. Upon death, the balance of a client's personal incidental funds along with the name and case number, ~~will~~ must be maintained in an interest-bearing account for disposition by the client's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, ~~will~~ must be maintained for disposition by the client's estate.
14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer the client's personal incidental funds, moneys, and records in an orderly manner.
15. Failure to properly record the receipt and disposition of personal incidental funds may constitute grounds for suspension of provider agency payments.
16. Client personal incidental funds must not be expended by the provider agency for the purchases of meals served in licensed day service programs nor may the purchase of such meals be a condition for admission to such programs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-21. Transfer, discharge, and expulsion of clients.

1. Movement of clients between levels of service by a provider agency or between ~~providers~~ provider agencies must be pursuant to a determination by ~~an individual~~ the person-centered service plan team. Reimbursement for the cost of a new service ~~must be~~ is contingent upon the timely submission to the department of an individual service plan.
2. Movement of clients ~~must be~~ are subject to the policies and procedures of the North Dakota ~~case~~ program management system and the approval of the department.

3. Any emergency movement may be initiated by the provider agency only with immediate notification of the department, parent, client, and guardian, ~~and advocate~~. The movement ~~will be~~ is subject to ~~the~~ subsequent review by the department which will determine if:
 - a. An emergency existed;
 - b. The rights of the client were protected and preserved;
 - c. Documentation exists in support of the ~~provider's~~ provider agency's action;
 - d. A prognosis of the client's potential for returning has been made; and
 - e. Services required to maintain the client in a habilitative setting are least restrictive ~~of liberty and~~ have been provided prior to movement.
4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century Code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-22. Staff-to-client ratios.

The ~~following~~ overall direct contact staff-to-client ratios shall form the basis for the determination of the rate of reimbursement for ~~providers~~ provider agencies of service to individuals with intellectual or developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

1. Intermediate care facilities for ~~the mentally retarded shall be~~ individuals with intellectual disabilities are subject to the direct contact staffing requirements of title 42-CFR 483.430, Code of Federal Regulations, part 483, section 430.
2. Transitional community living facility shall maintain a one to eight direct contact staff-to-client ratio during those periods when the clients are awake and on the premises, and one direct contact staff when clients are asleep.
3. Minimally supervised living arrangements and ~~providers~~ provider agencies of congregate care for the aged shall maintain one direct contact staff onsite when clients are present when required by the department.
4. In minimally supervised apartment living arrangements, one direct contact staff shall be onsite when clients are present when required by the department.
5. Supported living arrangements shall maintain a direct contact staff-to-client ratio of one to twenty.
6. Day supports shall maintain a direct contact staff-to-client ratio of one to five.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2010; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-23. Staff hours.

1. A calculation of the total number of employees necessary to meet staff-to-client ratios is made on the basis of a full-time equivalent employee. Assuming that a full-time employee has fifty-two working weeks of five days each, twelve holidays, ten vacation days, and ten sick days per year, the actual number of days worked is two hundred twenty-eight per year. ~~Providers~~Provider agencies who grant fewer paid absences must use a full-time equivalent calculation which reflects a higher number of working days.
2. Assuming a two hundred twenty-eight day work year:
 - a. Staffing for the three hundred sixty-five day service provided by a residential service provider agency each year requires 1.6 full-time equivalent staff members for each shift slot to be filled at all times (two hundred twenty-eight times 1.6 equals three hundred sixty-five).
 - b. Staffing for the two hundred sixty days of service provided by a day service provider agency each year requires 1.14 full-time equivalent staff members for each staff required by the ratio (two hundred twenty-eight times 1.14 equals two hundred sixty).
3. To calculate the number of duty hours in a week, eight hours per day for five days (day services) and eight hours per night for seven nights (sleep time) are subtracted from the total hours of the week for residential service ~~providers~~provider agencies.

History: Effective July 1, 1984; amended effective July 1, 2001; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-24. Application.

1. This chapter will be applied to ~~providers of~~provider agencies for services to individuals with developmental disabilities, except distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for individuals with intellectual disabilities, starting the first day of a facility's first fiscal year which begins on or after July 1, 1985; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this chapter through contract or through official statements of department policy. Specific sections of this chapter will be applied to services provided in distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for individuals with intellectual disabilities. The sections of this chapter that apply are section 75-04-05-01; subsections 1, 4, 5, 6, and 7 of section 75-04-05-02; subsections 1, 2, ~~and 3, and 4~~ of section 75-04-05-08; ~~sections~~subsections 5 through 12 of section 75-04-05-09, ~~75-04-05-10, 75-04-05-11, and 75-04-05-12~~; subsections 1 through 10, 12 through ~~2019, 2221~~ through ~~2730, 29 through 32, 34, 35, 37~~ through ~~4039, 43, and 45~~42 through 44, 47 through 51, 53 through ~~5255~~ of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-14, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, 75-04-05-19, 75-04-05-20, 75-04-05-21, 75-04-05-22, and 75-04-05-23; and subsection 1 of section 75-04-05-24.
2. This chapter will be applied to ~~providers~~provider agencies of supported employment extended services to individuals with developmental disabilities, mental illness, traumatic brain injury, and other severe disabilities, except as operated through the human service centers; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, subsections 1 through ~~34, 6, 8, 10~~ through ~~1422, 1624, 25, 27, 29~~ through ~~18, 20, 2238, and 41~~ through ~~24, 27, and 2844~~ of section 75-04-05-01; section 75-04-05-02; section 75-04-05-08; subsections 2, 6

through 10, and 12 of section 75-04-05-09; subsection 1, subsection 2, and subdivisions a, h, and i of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1, and subdivisions a through c of subsection 2 of section 75-04-05-11; subsections 1 and 2, subdivisions a through d, f, and i of subsection 3, and subsections 4 through 7 of section 75-04-05-12; subsections 2 through 10, 12 through ~~53~~55 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; ~~and~~ subsections 1, 2, and 5 of section 75-04-05-21; and subsection 2 of section 75-04-05-24 of this chapter will be applied to supported employment extended services.

3. This chapter will be applied to ~~providers~~provider agencies of individualized supported living arrangements services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to the ~~providers~~provider agencies of individualized supported living arrangements services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through ~~53~~55 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the ~~providers~~provider agencies of individualized supported living arrangements services:
 - a. Each provider agency of individualized supported living arrangements shall maintain separate revenue records for direct service reimbursements and for administrative reimbursement. Records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:
 - (1) Direct service reimbursements from the department;
 - (2) Copayment responsibility of an individual receiving individualized supported living arrangements services; and
 - (3) Intended to cover direct service costs.
 - b. Each provider agency of individualized supported living arrangements shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client revenues and cost records are to be separately maintained from revenue and cost records whose payment source is the department.
 - c. When direct service reimbursements from the department exceed direct service costs attributable to the department by the margin established by department policy, payback to the department is required. In these situations, the entire overpayment must be refunded.
 - d. A provider agency may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.
4. This chapter will be applied to ~~providers~~provider agency of family support services and family care option III; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to ~~providers~~provider agencies of family support services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section

75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through ~~5355~~ of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the ~~providers~~provider agencies of family support services and family care option III:

- a. Each provider agency of family support services and family care option III shall maintain separate revenue records for direct service reimbursements and for administrative reimbursements. These cost records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:
 - (1) Direct service reimbursements from the department; and
 - (2) Parental copayment responsibility as documented on the family support service authorization.
- b. Each provider agency of family support services and family care option III shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client cost records are to be separately maintained from cost records for clients whose payment source is the department.
- c. Payback in the form of a refund is required when direct service revenues from the department exceed direct service costs attributable to the department.
- d. A provider agency may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

History: Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01; 34 CFR 363

CHAPTER 75-04-06
ELIGIBILITY FOR INTELLECTUAL DISABILITIES-DEVELOPMENTAL DISABILITIES
CASEPROGRAM MANAGEMENT SERVICES

Section

75-04-06-01	Principles of Eligibility
75-04-06-02	Criteria for Service Eligibility - Class Member [Repealed]
75-04-06-02.1	Criteria for Service Eligibility
75-04-06-03	Criteria for Service Eligibility - Applicants Who Are Not Members of the Plaintiff Class [Repealed]
75-04-06-04	Criteria for Service Eligibility - Children Birth Through Age Two
75-04-06-05	Service Availability
75-04-06-06	Developmental Disabilities Program Management Eligibility for Three-Year-Old and Four-Year-Old Children [Repealed]

75-04-06-01. Principles of eligibility.

1. The process of determining an individual's eligibility to receive intellectual disabilities-developmental disabilities easeprogram management services involves the recognition of several criteria and an understanding of expected outcomes as each criterion is applied. Professional judgment is applied to determine the applicability of the provision of intellectual disabilities-developmental disability easeprogram management services in accordance with chapter ~~75-05-06~~75-05-04.
2. The following criteria must be used as the frame of reference for a team of at least three professionals in the human service center, led by the developmental disabilities program administrator or the administrator's designee, for the determination of an individual's eligibility for intellectual disabilities-developmental disabilities case management services.

History: Effective July 1, 1991; amended effective January 1, 1997; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-02.1. Criteria for service eligibility.

1. An individual is eligible for intellectual disabilities-developmental disabilities easeprogram management services if the individual has a diagnosis of ~~mental-retardation~~intellectual disability which is severe enough to constitute a developmental disability.
 - a. A diagnosis of the condition of ~~mental-retardation~~intellectual disability must be made by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association.
 - b. Determination of whether the manifestation of the condition is severe enough to constitute a developmental disability must be done in accordance with the definition of developmental disability in North Dakota Century Code section 25-01.2-01.
2. An individual is eligible for intellectual disabilities-developmental disabilities easeprogram management services if the individual has a condition of ~~mental-retardation~~intellectual disability, diagnosed by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association, which is not severe enough to constitute a developmental disability, and the individual must be able to benefit from treatment and services purchased through the developmental disability division on behalf of an individual who meets the criteria of subsection 1.

3. An individual is eligible for intellectual disabilities-developmental disabilities [easeprogram](#) management services if the individual has a condition, other than mental illness, severe enough to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with the condition of ~~mental-retardation~~[intellectual disability](#), and the individual must be able to benefit from services and intervention techniques which are so closely related to those applied to an individual with the condition of ~~mental-retardation~~[intellectual disability](#) that provision is appropriate. Determination of eligibility for individuals described in this subsection requires the application of professional judgment in a two-step process:
 - a. The team must first determine whether the condition is severe enough to constitute a developmental disability. North Dakota Century Code section 25-01.2-01 must be applied in order to determine if a developmental disability is present. The presence of a developmental disability does not establish eligibility for services through the intellectual disabilities-developmental disabilities [easeprogram](#) management services system, but does require the team to consider all assessment data and apply professional judgment in the second step.
 - b. The team must then determine whether services can be provided to an individual determined to have a condition, other than mental illness, severe enough to constitute a developmental disability. The team must have a thorough knowledge of the condition and service needs of the applicant, as well as a thorough knowledge of services that would be appropriate through the developmental disabilities system. When considering if intellectual disabilities-developmental disabilities [easeprogram](#) management is appropriate, the team must consider factors, including:
 - (1) Whether the individual would meet criteria appropriately used to determine the need for services in an intermediate care facility for individuals with intellectual disabilities.
 - (2) Whether appropriate services are available in the existing developmental disabilities service delivery system.
 - (3) Whether a service, which uses intervention techniques designed to apply to an individual with intellectual disabilities, delivered by staff trained specifically in the field of intellectual disabilities, would benefit the individual.
 - (4) Whether a service, designed for an individual with the condition of ~~mental-retardation~~[intellectual disability](#), could be furnished to the individual without any significant detriment to the individual or others receiving the service.
 - c. If the team concludes, through the application of professional judgment, that an individual's needs can be met through specific services purchased by the department for individuals who meet the criteria of subsection 1, [aan](#) intellectual disabilities-developmental disabilities [easeprogram](#) manager may be assigned. Services may be provided, subject to the limits of legislative appropriation. New services need not be developed on behalf of the individual.

History: Effective January 1, 1997; [amended effective July 1, 2012; January 1, 2017.](#)

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-04. Criteria for service eligibility - Children birth through age two.

1. Service eligibility for children from birth through age two is based on distinct and separate criteria designed to enable preventive services to be delivered. Young children may have conditions which could result in substantial functional limitations if early and appropriate

intervention is not provided. The collective professional judgment of the team must be exercised to determine whether the child is high risk or developmentally delayed, and if the child may need early intervention services. If a child, from birth through age two, is either high risk or developmentally delayed, the child may be included on the caseload of ~~an~~ intellectual disabilities-developmental disabilities ~~case~~program manager and considered for those services designed to meet specific needs. Eligibility for continued service inclusion through intellectual disabilities-developmental disabilities ~~case~~program management must be redetermined by age three using criteria specified in section 75-04-06-02.1.

2. For purposes of this section:

a. "Developmentally delayed" means a child, from birth through age two:

(1) Who is performing twenty-five percent below age norms in two or more of the following areas:

- (a) Cognitive development;
- (b) Gross motor development;
- (c) Fine motor development;
- (d) Sensory processing (hearing, vision, haptic);
- (e) Communication development (expressive or receptive);
- (f) Social or emotional development; or
- (g) Adaptive development; or

(2) Who is performing at fifty percent below age norms in one or more of the following areas:

- (a) Cognitive development;
- (b) Physical development, including vision and hearing;
- (c) Communication development (expressive and receptive);
- (d) Social or emotional development; or
- (e) Adaptive development.

b. "High risk" means a child, from birth through age two:

(1) Who, based on a diagnosed physical or mental condition, has a high probability of becoming developmentally delayed; or

(2) Who, based on informed clinical opinion which is documented by qualitative and quantitative evaluation information, has a high probability of becoming developmentally delayed.

History: Effective July 1, 1991; amended effective July 1, 1993; January 1, 1997; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-05. Service availability.

The extent to which appropriate services other than easeprogram management services are available to eligible clients is dependent upon legislative appropriations and resources. Eligibility for easeprogram management services does not create an entitlement to services other than easeprogram management services if resources are not available.

History: Effective August 1, 1997; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, ~~50-06-05.3~~

CHAPTER 75-04-07
INDIVIDUALIZED SUPPORTED LIVING ARRANGEMENTS FOR PERSONS WITH
INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES

Section

75-04-07-01	Definitions
75-04-07-02	Conditions of Client Participation
75-04-07-03	Conditions of Provider <u>Agency</u> Participation
75-04-07-04	Discontinuation, Termination, and Nonrenewal of Individualized Supported Living Arrangements Contracts or Services
75-04-07-05	Services Available in the Individualized Supported Living Arrangements Program
75-04-07-06	Appeals

75-04-07-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Administrative reimbursement" means a flat fee intended for reimbursement toward administrative costs and management incentive.
2. "Ancillary services" means consultative services from a psychologist, physical therapist, nurse, audiologist, dietician, speech pathologist, or orthotic and prosthetic specialist. Consultative services must be necessary to provide training to staff for completion of behavioral or service objectives for a particular client, or necessary to maintain or restore functioning level for a client. This subsection may not be construed to allow the purchase of durable medical equipment. This definition of "ancillary services" applies only to the individualized supported living arrangements program.
3. "Clients" means eligible persons with developmental disabilities on whose behalf services are provided or purchased.
4. "Cost-effective" means a daily rate for residential support which is equal to or less than that of a residential program the client was in prior to being referred to an individualized supported living arrangements program. An assessment of cost effectiveness of a prospective contract may include environmental considerations for others that are affected by the client's current or proposed placement in the individualized supported living arrangements program.
5. "Department" means the department of human services.
6. "Division" means the developmental disabilities division of the department.
7. ~~"Failure to cooperate" means refusal of a client in individualized supported living arrangements to participate in support, training, or therapeutic services designed to increase the client's capacity for independent functioning or perform self-care or activities of daily living which the client has been found to have the skills or adaptive methods to competently perform. A determination of the skills or adaptive methods to competently perform may be made based on assessments made by the individual plan program team.~~
- ~~8.~~ "Family member" means relatives or a client to the second degree of kinship.
- 9.8. "Generic service" means services that are available to any member of the population and are not specific to meeting specialized needs of individuals with intellectual disabilities-developmental disabilities.
- ~~10.~~ ~~"Individual program plan team" means a multiagency, interdisciplinary team consisting of the client, significant others, advocates, direct contact workers, and others necessary to design a written plan of specific program intervention and action to meet the client's needs as identified~~

~~in the client's individual service plan. The individual program plan team must be developed in accord with the accreditation council standards pursuant to chapter 75-04-01.~~

- ~~41.9.~~ "Individual service plan" means an individual plan which identifies services required by the eligible client and the services to be provided. The individual service plan is developed by the intellectual disabilities-developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
- ~~42.10.~~ "Individualized supported living arrangements" means residential support services options in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
- ~~43.11.~~ "Intellectual disability-development disability related condition" means a condition that results in the person being eligible pursuant to chapter 75-04-06.
- ~~44.12.~~ "Less intrusive" means a residential situation for a client allowing levels of direct supervision or intervention lower than other residential service program arrangements, yet meets the client's basic needs.
- ~~45.13.~~ "Less restrictive" means a residential situation allowing less control over a client's personal choices, movement, and activities, yet meets the person's basic needs.
14. "Person-centered service plan" means a plan that describes the individual's assessed needs, dreams, personal outcomes, and goals, and how the authorized services and natural supports provided will assist the individual in achieving their outcomes and live safely and successfully in the community.
- ~~46.15.~~ "Personal independence development" means intervention strategies, supports, and adaptations which have the effect of reducing a client's dependence on external support and assistance to meet basic needs.
- ~~47.16.~~ "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider agency licensed pursuant to chapter 75-04-01.
17. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
18. "Related organization" means an organization that a provider agency is, to a significant extent, controlled by, associated with, affiliated with, or able to control, and which furnishes services, facilities, or supplies to the provider agency. Control exists when an individual or an organization has the power, directly or indirectly, to significantly influence or direct the action or policies of an organization or institution.
- ~~19.~~ ~~"Similar benefits" means services, supports, or benefits a client may be eligible for through services other than a developmental disabilities division purchased service.~~
- ~~20.~~ "Twenty-four-hour staffing" means continuous and ongoing direct staff supervision by paid staff for all hours of a day which may be inclusive of a day service or employment program.

History: Effective June 1, 1995; amended effective July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-02. Conditions of client participation.

A client may be eligible to receive services in an individualized supported living arrangements setting if:

1. The client has been determined eligible for intellectual disabilities-developmental disabilities case management pursuant to chapter 75-04-06;
2. The client has been recommended for individualized supported living arrangements by an individual service plan;
3. The client's need for residential support is primarily the result of ~~mental retardation~~intellectual disability or a closely related condition;
4. The client's needs cannot be more appropriately met by a generic service or service including hospitals, clinics, human service centers, nursing facilities, or correctional facilities;
5. The client's needs can be expected to be met by the supports and services provided for in this chapter;
6. Service through the individualized supported living arrangements program is cost effective in meeting the client's needs;
7. An individualized supported living arrangements program is expected to be a less intrusive and less restrictive residential living alternative;
8. The client is at least twenty-one years of age or the client has completed all educational programming to which the client is entitled under state and federal laws and will reach the age of twenty-one years by the next September first, unless the client is participating during the last semester of education and the participation is part of a formal transition plan;
9. The client is living in the client's own residence, independent of a primary caregiver, or lives in a residence meeting the licensing requirements pursuant to chapter 75-03-21;
10. A licensed qualified provider agency is willing to provide necessary services;
11. The client has an individualized supported living arrangements contract with terms approved by the provider agency, the regional developmental disabilities program administrator, and the division, and which terms may:
 - a. Reflect individual service plans and ~~individual program~~person-centered service plan assessments of need and their respective recommendations;
 - b. Reflect the considerations of the client's legal rights and responsibilities; and
 - c. Reflect the efficient use of public resources.
12. The client's service needs remain compatible with the available services listed in section 75-04-07-05; and
13. When the client receives services in the home of a family, the home is licensed pursuant to chapter 75-03-21.

History: Effective June 1, 1995; amended effective July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-03. Conditions of provider agency participation.

1. Individualized supported living arrangement services shall be purchased by the department through the developmental disabilities division by individual contract from ~~providers~~provider agencies licensed pursuant to chapter 75-04-01.
2. As a condition of participation in the program, a licensed service provider agency shall include its individualized supported living arrangements program in the accreditation council on services for people with disabilities survey process.
3. In the event of discontinuation, termination, or nonrenewal of a contract or service, the provider agency shall cooperate in the referral and transition of the client to alternative services.
4. The provider agency shall make copies of all client records available to the department upon request.
5. For audit purposes, ~~providers~~provider agencies participating in the program shall maintain records of revenue and cost pursuant to chapter 75-04-05.
6. At the client's request, the department may negotiate contracts between ~~providers~~provider agencies of services and clients who pay the entire cost of the contract from their own financial resources. After negotiations are completed, the department shall have no further participation in the costs or payment of the contract provisions.
7. Each provider agency shall compile written job descriptions for their employees that include provisions for participation in ongoing training and requirements for education, experience, and skills. Provision must also be made for at least one performance evaluation per year.

History: Effective June 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-04. Discontinuation, termination, and nonrenewal of individualized supported living arrangements contracts or services.

1. Individualized supported living arrangement services to a client must be discontinued at the expiration of an executed contract when:
 - a. A client with legal capacity fails to cooperate with the delivery of services;
 - b. Based on the assessment of available material, the continued provision of services to the client presents a threat to the health and safety of the client or others; or
 - c. Based on the assessment of available material, it is determined that the needs of the client are no longer being met by the individualized supported living arrangements program or that continued services will not bring satisfactory results.
2. Nonrenewal of a service contract with a provider agency for a client must be considered by the department for reasons that include:
 - a. The client exhibits a lack of progress, assessed by the developmental disabilities case management utilization review process, in development of independent functioning consistent with the client's potential, unless barriers to development of independent functioning exist that cannot reasonably be expected to be controlled or ameliorated through available services;

- b. The provider agency fails to deliver the levels and types of services specified in the contract, to provide qualified staff, or to provide resources necessary to meet the individual's needs which have not decreased during the term of the contract;
 - c. The provider agency, regional developmental disabilities office, and the division fail to agree on contract renewal terms;
 - d. The provider agency fails to develop and activate ~~an individual program~~ person-centered service plan within thirty days of admission or annual program plan development;
 - e. Misrepresentation of the client's needs;
 - f. The provider agency fails to give the client a reasonable opportunity to participate in selection of ancillary service ~~providers~~ provider agencies and direct service staff; or
 - g. The housing occupied by the client is owned or controlled by the provider agency of service and service to the client is contingent upon the client remaining in that housing or lease or rental agreement, which is less favorable to the renter than that normally used in the local real estate market.
3. Immediate termination of a current contract for a client with a specific provider agency, or termination of services through the individualized supported living arrangements program, must be considered by the department based on available information and assessments through its developmental disabilities division for reasons that include:
- a. An individual service plan has been completed, which would terminate individualized supported living arrangements services or authorize an alternative residential service;
 - b. Substantiated abuse, neglect, or exploitation of the client by an employee or agent of the provider agency;
 - c. Institutionalization, incarceration, or alternative placement of the client, except as provided in subdivision g of subsection 1 of section 75-04-07-05;
 - d. Death of the client with the contract terminating on the date of death;
 - e. The client establishes a residence out of state;
 - f. The client refuses to cooperate in the provision of services; or
 - g. Continued service to the client presents an immediate threat to the health or safety of the client or others.

History: Effective June 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-05. Services available in the individualized supported living arrangements program.

- 1. Services and supports available for reimbursement in individualized supported living arrangements contracts:
 - a. Temporary room and board subsidies;
 - b. Ancillary services as defined in subsection 2 of section 75-04-07-01;

- c. Service coordination and ~~individual program~~person-centered service plan development and monitoring, including:
 - (1) Qualified ~~mental retardation or mental health~~developmental disabilities professional allowance; and
 - (2) Internal case management allowance;
 - d. Direct contact staff time for personal supports, including:
 - (1) Safety and health monitoring and maintenance;
 - (2) Personal hygiene and grooming;
 - (3) Management of personal affairs related to daily living needs;
 - (4) Food preparation and storage;
 - (5) Housekeeping and home maintenance;
 - (6) Clothing care and maintenance; and
 - (7) General supervision for health and safety;
 - e. Direct contact staff time for personal independence development strategies, including:
 - (1) Development of natural supports;
 - (2) Activities and strategies to promote community inclusion;
 - (3) Support and adaptive strategies to enhance client control and independence over the individual's environment, resources, activities, self-care, and self-control; and
 - (4) Training:
 - (a) Modeling;
 - (b) Demonstration;
 - (c) Experiential activities;
 - (d) Reinforcement; and
 - (e) Structured learning;
 - f. Administrative reimbursement;
 - g. Only an administrative reimbursement and service coordination allowance are available for the time a client is absent from the service setting and out of the ~~provider's~~provider agency's sphere of direct service responsibility for a time period that exceeds thirty consecutive days;
 - h. Relief staff time;
 - i. Direct contact staff training time; and
 - j. Fringe benefits for subdivisions c, d, e, and h of subsection 1 of section 75-04-07-05.
2. Services not available for reimbursement in individualized supported living arrangements contracts include:

- a. Room and board subsidies when:
 - (1) The housing occupied by the client does not meet local codes for occupancy;
 - (2) The housing occupied by the client is owned or controlled by the provider agency or a related organization, except when no other lessor is willing to rent to the client at a comparable rate due to credit, behavioral, or other factors attributable to the client;
 - (3) The client resides in a residential unit that has more than one bedroom per resident, except where the department determines standby, overnight staffing is a necessity for the protection of others;
 - (4) The client fails to apply for or accept maintenance benefits when eligible;
 - (5) The client resides in a building where more than twenty-five percent of the total bedrooms are occupied by individuals currently eligible for developmental disabilities-intellectual disabilities caseprogram management services; or
 - (6) The client's income exceeds basic need expenses by more than the personal spending allowance level for a resident of an intermediate care facility for individuals with intellectual disabilities;
- b. Financial assistance to purchase real property or motor vehicles;
- c. Direct supervision in excess of what is necessary for health and safety with determination based on available assessments;
- d. Personal support and assistance to complete daily living tasks a client is unwilling to perform, but capable of performing, unless assistance is necessary to avert threats to the client's safety with determination based on available assessments;
- e. Personal support for maintenance of housing that does not meet local dwelling codes;
- f. Support staffing for the care of pets or livestock;
- g. Assistance for maintenance of property other than the client's immediate residence and personal property;
- h. Services available to the client under entitlement programs or generic services;
- i. Supports or services to address personal preferences unless accommodation is cost neutral or is instrumental in developing the client's personal independence and will result in decreased need for paid support;
- j. Services provided to a client by a family member or in the home of a family member;
- k. Services provided to a client prior to execution of a contract;
- l. Direct support for travel for a client outside the client's community of residence unless support needs would be the same during the time of travel as at home or the travel is necessary for medical needs, emergency, or obtaining basic necessities not available in the client's home community;
- m. Purchase of real property or maintenance of income-producing property;
- n. Fees for guardianship, conservatorship, legal services, or financial management of investments, trusts, or estates;

- o. Replacement of institutional-based services when the client's needs are predominantly due to a condition not related to intellectual disabilities or a developmental disabilities ~~case~~[program](#) management eligible condition;
 - p. Material or financial reinforcers for behavior management plans; and
 - q. Continuous or twenty-four-hour supervision by paid staff on a one-to-one basis within the individualized supported living arrangements program for a client unless a shared staffing arrangement would create a safety threat to the client or others.
3. Excluding the qualifying intellectual disability-developmental disability, individualized supported living arrangements support or treatment is not available for any condition whose general medical protocol or generally accepted medical practices for treatment for the general population requires institutional care. Individualized supported living arrangements allow support services for management of medical conditions that are not attributable to the qualifying intellectual disability-developmental disability, if the qualifying intellectual disability-developmental disability causes the client to be unable to perform self-care that is normally expected by the general population medical protocol and generally accepted medical practices.
4. Services authorized by contract may include those in this section, but cost ceilings may be established by the department for rates of reimbursement for those services.

History: Effective June 1, 1995; [amended effective July 1, 2012; January 1, 2017.](#)

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-06. Appeals.

A client may perfect an appeal if the client has been denied services or has had services discontinued based on subsections 3, 4, 5, 6, 7, 9, and 12 of section ~~75-04-07-03~~[75-04-07-02](#), subdivisions a, b, and c of subsection 1, and subdivisions f and g of subsection 3 of section 75-04-07-04. An appeal under this section is timely perfected only if made in writing on forms developed and provided by the department. The complaining subject must submit the written request for an appeal and formal hearing to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

History: Effective June 1, 1995; [amended effective January 1, 2017.](#)

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

TITLE 94
CORRECTIONS AND REHABILITATION, DEPARTMENT OF

JANUARY 2017

ARTICLE 94-03
CRIME VICTIMS COMPENSATION

<u>Chapter</u>	
<u>94-03-01</u>	<u>General Administration</u>
<u>94-03-02</u>	<u>Definitions</u>
<u>94-03-03</u>	<u>Application for Compensation</u>
<u>94-03-04</u>	<u>Rehearing or Appeal</u>

CHAPTER 94-03-01
GENERAL ADMINISTRATION

<u>Section</u>	
<u>94-03-01-01</u>	<u>Organization and Functions</u>

94-03-01-01. Organization and functions.

- History.** The Uniform Crime Victims Reparation Act was enacted in 1975 and was codified in North Dakota Century Code chapter 65-13 under the administration of the workmen's compensation bureau. In 1993 the Legislative Assembly transferred the administration of the crime victims reparations to the division of adult services of the department of corrections and rehabilitation and was codified in North Dakota Century Code chapter 54-23.4. In 1995 the Legislative Assembly renamed the Crime Victims Reparations Act the Crime Victims Compensation Act. The Crime Victims Compensation Act provides compensation and assistance to innocent victims who have suffered bodily injury or death caused by criminally injurious conduct, or to their dependents.
- Functions.** The director of administrative services of the division of adult services supervises the administration of the Crime Victims Compensation Act. The crime victims compensation fund administrator manages the crime victims compensation fund and all claims for compensation.
- Inquiries.** All inquiries, requests for records, and correspondence is to be addressed to the crime victims compensation fund administrator as follows:

Crime Victims Compensation Fund
North Dakota Department of Corrections and Rehabilitation
P.O. Box 1898
Bismarck, ND 58502-1898

History: Effective January 1, 2017.

General Authority: NDCC 28-32-02, 54-23.4-04

Law Implemented: NDCC 28-32-02

CHAPTER 94-03-02 DEFINITIONS

Section
94-03-02-01 Definitions

94-03-02-01. Definitions.

The terms used throughout this article have the same meaning as in North Dakota Century Code section 54-23.4-01 unless otherwise defined in this section:

1. "Age of majority" means eighteen years of age or older.
2. "Alternative medical service" includes acupuncture, herbal remedies, and homeopathy.
3. "Applicant" means either the claimant or the victim as defined in North Dakota Century Code section 54-23.4-01.
4. "Crime victims compensation fund" means the fund established in the North Dakota treasury under the authority of the North Dakota department of corrections and rehabilitation and its division of adult services in accordance with North Dakota Century Code chapter 54-23.4 for the administration of crime victims compensation and payment of compensation for economic loss arising directly from criminally injurious conduct.
5. "Division" means the North Dakota department of corrections and rehabilitation's division of adult services.
6. "Economic loss" means financial detriment resulting from allowable expenses, including work loss, replacement services loss, medical expense, mental health services, and if the injury resulted in death, funeral expense, and dependent's economic loss and replacement services loss. Economic loss includes detriment caused by pain or suffering or physical impairment.
7. "Home health services" means medical services provided outside of a clinic or hospital to treat the victim of criminally injurious conduct.
8. "Immediate family" means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, or grandparent.
9. "Medical provider" includes licensed physicians, licensed physician's assistants, licensed nurse practitioners, licensed physical and occupational therapists, licensed pharmacists, licensed speech language pathologists, licensed dentists, licensed optometrists, and licensed chiropractors, massage therapists, and includes public or private hospitals, clinics, and pharmacies that employ physicians, physician's assistants, nurse practitioners, physical and occupational therapists, pharmacists, speech language pathologists, dentists, optometrists, chiropractors, and massage therapists.
10. "Mental health provider" includes licensed psychiatrists, licensed clinical psychologists, licensed or certified professional counselors, and licensed or certified social workers, and includes licensed public or private hospitals, clinics, and treatment facilities that employ psychiatrists, clinical psychologists, professional counselors, and social workers.
11. "Noneconomic detriment" includes pain, suffering, inconvenience, permanent or temporary physical impairment, and other nonpecuniary or noneconomic damages.
12. "Offender" means an individual who has committed an act of criminally injurious conduct.

13. "Reasonably incurred expenses" means allowable expenses incurred that are consistent with what a reasonable person would incur in the conduct of the same business in the same or similar circumstances.

14. "Resident of this state" means an individual who is domiciled in North Dakota or is in North Dakota for other than a temporary or transitory purpose. Whether an individual is a resident of North Dakota must be determined as defined in North Dakota Century Code section 54-01-26.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-12

CHAPTER 94-03-03

APPLICATION FOR COMPENSATION

Section

<u>94-03-03-01</u>	<u>Reporting Criminally Injurious Conduct to Law Enforcement</u>
<u>94-03-03-02</u>	<u>Application Requirements</u>
<u>94-03-03-03</u>	<u>Eligibility Requirements</u>
<u>94-03-03-04</u>	<u>Ineligible Claims</u>
<u>94-03-03-05</u>	<u>Contributory Misconduct and Actions Affecting Awards</u>
<u>94-03-03-06</u>	<u>Award Limitations</u>
<u>94-03-03-07</u>	<u>Recovery From Offender</u>
<u>94-03-03-08</u>	<u>Medical Services</u>
<u>94-03-03-09</u>	<u>Dental Services</u>
<u>94-03-03-10</u>	<u>Mental Health Services</u>
<u>94-03-03-11</u>	<u>Home Health Services</u>
<u>94-03-03-12</u>	<u>Service Animals</u>
<u>94-03-03-13</u>	<u>Work Loss</u>
<u>94-03-03-14</u>	<u>Loss of Support</u>
<u>94-03-03-15</u>	<u>Replacement Services Loss</u>
<u>94-03-03-16</u>	<u>Travel Expenses, Meals, and Lodging</u>
<u>94-03-03-17</u>	<u>Funeral and Burial Expenses</u>

94-03-03-01. Reporting criminally injurious conduct to law enforcement.

1. The division may not award compensation unless the criminally injurious conduct resulting in economic loss was reported to a law enforcement officer within ninety-six hours after its occurrence.
2. The division may find there was good cause for failure to report criminally injurious conduct to law enforcement within ninety-six hours. Good cause includes:
 - a. Evidence, including medical records or verifiable reports from third parties, which substantiate the applicant's health or safety would have been jeopardized if the criminally injurious conduct had been reported in a timely manner.
 - b. Law enforcement substantiates there was a fear of retaliation.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-04, 54-23.4-06

94-03-03-02. Application requirements.

1. A completed application for an award of compensation must be timely submitted to the division within one year from the date the criminally injurious conduct was reported to a law enforcement officer. The division may extend the time to submit a completed application in the interests of justice. The interests of justice include:
 - a. The applicant is a minor.
 - b. The applicant's physical and psychological condition substantially contributed to the applicant's inability to timely submit a completed application.
 - c. The interests of justice do not include attorney error or mistake or lack of knowledge of the Crime Victims Compensation Act.

2. A claimant for benefits shall submit a completed application for compensation signed by the claimant or the claimant's parent, guardian, or legal representative on an application form prescribed by the division. An employer, an assignee, a medical provider, a service provider, or an insurance company may not submit an application for benefits on behalf of a claimant. The claimant shall provide the following information to the division:

a. Claimant information:

(1) Full name;

(2) Residential address;

(3) Gender;

(4) Date of birth;

(5) Residential and work telephone numbers;

(6) Ethnicity;

(7) Residency;

(8) Known disabilities prior to the criminally injurious conduct; and

(9) Relationship to the victim if claimant is not the victim.

b. Information regarding the criminally injurious conduct:

(1) Type of offense;

(2) State or federal jurisdiction;

(3) Date, time, and location the criminally injurious conduct was committed;

(4) Date and time the criminally injurious conduct was reported to law enforcement authorities;

(5) Name of law enforcement agency to which the criminally injurious conduct was reported;

(6) Name of offender, if known; and

(7) Brief description of the criminally injurious conduct and resulting injuries.

c. Information on civil lawsuit, mediation, or settlement negotiation:

(1) Statement whether the claimant has or will commence a civil lawsuit or seek damages related to the criminally injurious conduct; and

(2) Name, address, and telephone number of claimant's attorney, if the claimant will be represented by counsel.

d. Information on benefits from other collateral sources:

(1) List the benefits claimant has received or may be eligible to receive from other collateral sources as a result of the criminally injurious conduct, including disability benefits; employer-paid leave, including sick leave or annual leave; health insurance, including medical, vision, and dental benefits; life insurance; Medicare; medical assistance or Medicaid; motor vehicle insurance; personal and charity

fundraising, including online fundraising; restitution; social security benefits and social security disability benefits; veterans' benefits; workforce safety and insurance; and any other state, county or tribal public assistance, including food stamps.

(2) For each benefit identified, provide the type of benefit, amount of benefits provided or to be provided, provider name, address, telephone number, and identification policy number, if applicable.

e. The claimant's dated signature:

(1) Certifies the claimant is eligible to submit a claim and that the information provided is true and correct to the best of the claimant's knowledge.

(2) Authorizes the release of protected health information and confidential information necessary for the division to verify and administer the claim.

3. The division shall review the application and supporting documents for eligibility and investigate the claim. If additional information is needed to determine the eligibility or validity of a claim, or to substantiate the degree of loss, the division may ask the applicant for further information or request it directly from outside entities to the extent permitted by law.

4. If a claim is compensable, but there are insufficient funds to make a compensation award, the division may:

a. Make a partial award and reconsider the claim later during the fiscal year; or

b. Extend the claim into a subsequent fiscal year.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-04, 54-23.4-06

94-03-03-03. Eligibility requirements.

Eligibility for crime victims compensation benefits includes compliance with the requirements under North Dakota Century Code section 54-23.4-06 and the following criteria:

1. Whether claimant complied with reasonable requests from law enforcement personnel, including giving a statement to police, submitting to followup interviews by police, submitting requested evidence, viewing photographs or a line-up of suspects, meeting with prosecutors, and appearing and testifying in court proceedings. If claimant fails to cooperate with law enforcement, the division may deny the claim.

2. Whether claimant cooperated with the division during the application process, with requests for supplemental information, and with requests for information for the duration of the open claim, including requests for supplemental medical and psychological and treatment evaluations and information. If claimant fails to cooperate with the division, the division may deny the claim.

3. Whether the victim provoked or instigated the incident causing injury or death to the victim.

4. Whether the victim assisted in, facilitated, attempted to, or committed a criminal act at the time of injury or death of the victim.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 12.1-41, 54-23.4-04, 54-23.4-06, 54-23.4-08

94-03-03-04. Ineligible claims.

Claims ineligible for compensation include:

1. Claims subject to the limitations in North Dakota Century Code sections 54-23.4-03, 54-23.4-06, and 54-23.4-10.
2. Claims arising from self-inflicted injuries, including the accidental discharge of a firearm.
3. Obscene telephone calls.
4. Costs and fees incurred in connection with a civil action except as authorized in North Dakota Century Code section 54-23.4-12.
5. Claims for property loss or damage.
6. Claims for expenses incurred as a result of crimes committed against an inmate in the legal or physical custody of a correctional facility or the department of corrections and rehabilitation.
7. A claim by, or on behalf of, an inmate convicted of a crime and injured while in the legal or physical custody of a correctional facility or the department of corrections and rehabilitation.
8. The claimant, or an individual on whose behalf a claim has been submitted, was not in compliance with North Dakota statute, motor vehicle liability, and financial responsibility requirements, and whose conduct contributed to a motor vehicle crash.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-03, 54-23.4-06, 54-23.4-10, 54-23.4-12

94-03-03-05. Contributory misconduct and actions affecting awards.

The division shall deny compensation if the claimant's conduct contributed substantially to the incident. To determine whether substantial contributory misconduct exists, the division shall consider all available information, including the claimant's age; the claimant's account of the crime; law enforcement reports; witness statements; medical, laboratory, and toxicology reports; and court transcripts and statements. The conduct of the claimant is deemed to have contributed substantially to the injury if the claimant did one of the following:

1. Initiated, provoked, or prolonged a verbal or physical confrontation with the offender.
2. Participated in a voluntary or illegal act casually related to the victim's injuries.
3. Acted in a manner that placed the claimant into a situation likely to result in injury.
4. Self-inflicted the injuries.
5. Knowingly and voluntarily entered into a motor vehicle operated by an individual while under the influence of alcohol or drugs, or both, in violation of North Dakota Century Code section 39-08-01 or equivalent ordinance or in violation of North Dakota Century Code section 39-08-01.2.
6. Sought retaliation against the offender.
7. Knowingly and voluntarily entered into a physical altercation.
8. Was charged with a criminal offense as a result of the criminally injurious conduct.

9. Was under the influence of an alcoholic beverage or controlled substance, or both, and the division determines the victim's intoxication on account of alcoholic beverages, controlled substances, or both, were a factor contributing to the criminally injurious conduct.
10. Contributory misconduct does not include victims of human trafficking as defined in North Dakota Century Code chapter 12.1-41.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 12.1-41, 54-23.4-06, 54-23.4-12

94-03-03-06. Award limitations.

1. The crime victims compensation fund is a secondary source for payment for economic losses not paid by other collateral sources, including disability benefits; employer-paid leave, including sick leave or annual leave; health insurance, including medical, vision, and dental benefits; life insurance; Medicare; medical assistance or Medicaid; motor vehicle insurance; personal and charity fundraising, including online fundraising; restitution; social security benefits and social security disability benefits; veterans' benefits; workforce safety and insurance; and any other state, county, or tribal public assistance, including food stamps.
 - a. The division shall reduce or deny compensation for economic loss when payment for economic loss has been provided by collateral sources. Upon receipt of evidence of payment from collateral sources, the division shall calculate the amount of the reduction by subtracting the total amount received from the collateral sources from the award limitations.
 - b. The division may not pay for any economic loss when a collateral source has paid the maximum amount of the benefit authorized under North Dakota Century Code subdivision a of subsection 7 of section 54-23.4-01, subsection 7 of section 54-23.4-06, and subsection 8 of section 54-23.4-06, except as provided in subsection 8 of section 54-23.4-06 for criminally injurious conduct that occurred outside the boundaries of the state of North Dakota.
 - c. The division may not pay compensation when a collateral source is available to pay.
2. If payment from collateral source exists or was available, either the service provider or the claimant shall notify the division whether a request was submitted to the collateral source for payment. Before payment is made from the division, either the provider or the claimant shall provide documentation that:
 - a. Verifies the amount paid by the collateral source; or
 - b. Verifies the applicant or service was not covered by the collateral source.
3. If the claimant has no medical or dental insurance or other collateral source for payment, the division shall pay eighty percent of billed charges for eligible medical, dental, or mental health services. The eighty percent limitation is not applicable to mental health service providers who utilize a sliding fee scale.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-01, 54-23.4-06

94-03-03-07. Recovery from offender.

1. If restitution is ordered by the court or paid to the victim, the victim shall reimburse the fund for the total amount of restitution paid to the victim, but not to exceed the total benefits paid by the fund.
2. If there is recovery to the victim through a civil suit, expenses paid by the fund must be reimbursed or a claim may be denied if the recovery is more than the victim's economic loss.
3. The claimant, or the claimant's parent, guardian, or legal representative, shall notify the division in writing of any proposed or pending civil litigation, mediation, settlement negotiations, or arbitration related to the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-12

94-03-03-08. Medical services.

1. **Verification.** A request for compensation for medical services must include a billing statement containing the medical provider's name, business address, telephone number, treatment plan, and other information necessary for the division to determine the claim is for services directly related to the criminally injurious conduct. The division may order an examination of the victim by a medical care provider designated by the division. The victim's failure to appear for, or cooperate in, the examination may result in the division's denial of the applicable portion of the claimant's request for reimbursement.
2. **Compensation limitations.**
 - a. The division may not pay more than five hundred dollars for eye glasses.
 - b. The division may not pay more than one thousand dollars for new prescription medications.
 - c. The division may not pay more than one thousand dollars for alternative medical services.
 - d. The division may not pay more than one thousand two hundred dollars for chiropractic services or massage therapy.
 - e. The division may not pay more than five thousand dollars for necessary cosmetic reconstructive procedures.
 - f. The division may not pay compensation for pre-existing medical conditions and prior prescription medications.
 - g. The division may not pay compensation for interest, finance, or collection fees.
 - h. The division may not pay compensation when the victim or claimant fails to comply with prescribed treatment or treatment recommendations.
3. **Time limitations.** Medical services must be provided within two years from the date of the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-08

Law Implemented: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-08

94-03-03-09. Dental services.

1. **Verification.** A request for compensation for dental services must include a billing statement containing the dental provider's name, business address, telephone number, treatment plan, and other information necessary for the division to determine the claim is for services directly related to the criminally injurious conduct.
2. **Compensation limitations.**
 - a. The division may not pay more than five thousand dollars for dental services.
 - b. The division may not pay compensation when the victim or claimant fails to comply with prescribed treatment or treatment recommendations.
3. **Time limitations.** Dental services must be provided within two years from the date of the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-08

Law Implemented: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-08

94-03-03-10. Mental health services.

1. **Provider qualifications.** The division may pay compensation to a mental health provider who has provided services to a victim of criminally injurious conduct if the provider meets one of the following requirements:
 - a. Holds a master's degree in counseling, psychology, social work, or a related field, and is licensed or certified as a professional counselor, social worker, or therapist.
 - b. Holds a doctor's degree and is licensed or certified as a professional counselor, social worker, or therapist.
 - c. Is a student intern in an accredited graduate program supervised by a licensed clinician.
 - d. Is a licensed public or private hospital, clinic, or treatment facility.
2. **Verification.** A request for compensation for mental health services must include a billing statement containing the mental health provider's name, business address, telephone number, treatment plan, and other information necessary for the division to determine the claim is for services directly related to the criminally injurious conduct. The provider shall verify that services provided are directly related to the criminally injurious conduct and specify the number of treatment sessions that are necessary.
3. **Treatment and payment limitations.** Treatment and payment for mental health services is limited to:
 - a. Assessment, diagnosis, and treatment, including individual or group counseling sessions.
 - b. No longer than a two-year period beginning on the date of the first session and:
 - (1) For adult victims, no more than thirty sessions, and total compensation may not exceed three thousand six hundred dollars.
 - (2) For minor victims, no more than forty sessions, and total compensation may not exceed four thousand eight hundred dollars.

- (3) For individuals who were physically present at the crime scene or who discovered the body in a homicide, no more than ten sessions, and total compensation may not exceed one thousand two hundred dollars.
- (4) For a parent or guardian of a homicide victim, no more than ten sessions, and total compensation may not exceed one thousand two hundred dollars.
- (5) For a parent or guardian of a minor victim, no more than ten sessions, and total compensation may not exceed one thousand two hundred dollars.
- (6) If a provider substantiates the need for additional sessions, the division may allow up to ten additional sessions and up to one thousand two hundred dollars total compensation for the additional sessions. The additional sessions may not extend beyond the two-year period under this section.
- (7) The division may not pay compensation for mental health services for the purpose of determining a child's custody.
- (8) The division may not pay compensation when the victim or claimant fails to comply with prescribed treatment or treatment recommendations.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-04

94-03-03-11. Home health services.

1. **Verification.** A request for compensation for home health services must include written verification from the medical or mental health provider that supports the need for the service and other information necessary for the division to determine the claim is for services directly related to the criminally injurious conduct.
2. **Payment limitations.** The division may not pay more than three hundred dollars per week for home health services and total compensation may not exceed four thousand eight hundred dollars.
3. **Time limitations.** Home health services must be provided within four months from the date of the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-04

94-03-03-12. Service animals.

If a medical or treatment provider verifies the need for a service animal for a victim, the division may not pay more than one thousand dollars toward the purchase of the service animal. The service animal must be purchased within two years from the date of the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-04

94-03-03-13. Work loss.

1. **Verification.** A claim for reimbursement for work loss must include written documentation from a medical or mental health provider, the claimant's employer, and information the division may request that supports payment for work loss.

- a. Medical verification must include how the injury or condition is directly related to the crime. Information must include when the victim will be able to resume work.
- b. Employer verification must include dates absent from work, net salary for periods immediately prior to the incident, and available sick leave or annual leave.
- c. Self-employed victims shall provide a copy of federal income tax return for one year prior and other substantial verification of work loss or profits the division determines is necessary to support payment for work loss.

2. Payment limitations. Payment for work loss is limited to four months from the date of the criminally injurious conduct.

- a. Payment for work loss may not exceed more than three hundred dollars per week up to a maximum of four thousand eight hundred dollars.
- b. Payment for work loss includes absence from work for medical and mental health services only.
- c. A claimant must be unable to work at least three days in order to be eligible for work loss benefits.
- d. Work loss benefits may not be paid for time in which the claimant was eligible for sick leave, annual leave, or compensatory time.
- e. Work loss benefits may not be paid for time in which the claimant has medical leave or annual leave available.
- f. A claimant is not entitled to work loss payments for any period of time the claimant is in the custody of a federal, state, local or regional, or tribal correctional facility.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-06, 54-23.4-13

Law Implemented: NDCC 54-23.4-01, 54-23.4-04, 54-23.4-06, 54-23.4-13

94-03-03-14. Loss of support.

The division may pay for loss of support to the victim's dependents if the victim had been providing support prior to the date of the criminally injurious conduct.

1. **Verification.** A claim for loss of support must include verification of the amount of support the victim provided to dependents prior to the criminally injurious conduct. Verification includes federal, state, and local tax forms; social security benefits; veterans' benefits; life insurance; survivor benefits; certified death certificate; guardianship papers when applicable; or other relevant documentation that demonstrates financial dependency, including birth certificates or child support or spousal orders.
2. **Payment limitations.** The division may pay for loss of support on a monthly basis at a rate of not more than three hundred dollars per week. If more than one person is eligible for a loss of support award, the division may apportion the total amount of support payable to each dependent in equal amounts.
3. **Time limitations.** The division may not pay for loss of support for more than a total of six months of benefits.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-04, 54-23.4-06

94-03-03-15. Replacement services loss.

Replacement services loss as defined in North Dakota Century Code section 54-23.4-01 excludes costs for routine vehicle maintenance, home maintenance, or lawn care services.

1. **Verification.** A claim for reimbursement for replacement services loss must include receipts for the billed amount, type of service provided, and other information necessary for the division to determine the claim is for services directly related to the criminally injurious conduct.
2. **Payment limitations.** The division may not pay more than one thousand dollars for replacement services loss.
3. **Time limitations.** Replacement services must be provided within two years from the date of the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-01, 54-23.4-04

94-03-03-16. Travel expenses, meals, and lodging.

The division may reimburse a claimant for meals, lodging, and travel expenses for travel directly related to the criminally injurious conduct.

1. **Verification.** The claimant shall submit receipts for travel and lodging expenses to the division.
2. **Payment limitations.**
 - a. Travel distance must be at least one hundred fifty miles round trip from the claimant's residence in order for the claimant to be eligible for reimbursement of travel expenses.
 - b. Reimbursement for lodging and meals may not exceed the rates established in North Dakota Century Code section 44-08-04.
 - c. Reimbursement for mileage for the use of a privately owned automobile may not exceed the rate established in North Dakota Century Code section 54-06-09.
 - d. The maximum reimbursement for lodging, meals, and mileage is one thousand dollars.
 - e. Reimbursement for travel expenses for immediate family to attend the victim's funeral service may not exceed two thousand five hundred dollars and for not more than five consecutive days of travel time. Travel expenses to attend funeral services are included in the overall five thousand dollar maximum for funeral expenses.
 - f. Reimbursement for vehicle rental may not exceed thirty dollars per day.
 - g. Reimbursement for travel expenses is limited to the victim and one caregiver if the victim is a minor.
 - h. The division may not pay reimbursement for travel expenses to obtain services from a provider located out of state unless good cause is shown.
 - i. The division may not pay reimbursement for travel expenses for the victim or immediate family of a homicide victim to attend court proceedings or for the victim to meet with law enforcement.

3. **Time limitations.** The division may not pay for reimbursement of travel expenses after two years from the date of the criminally injurious conduct except for reimbursement for mental health services. Travel expenses for mental health services are limited to no longer than a two-year period beginning on the date of the first session.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 44-08-04, 54-06-09, 54-23.4-06

94-03-03-17. Funeral and burial expenses.

1. Funeral and burial expenses include:

- a. Casket or cremation urn;
- b. Cemetery plot;
- c. Grave liner;
- d. Headstone or grave marker;
- e. Opening and closing the grave;
- f. Professional care of the victim's remains, including embalming, cremation, cosmetology, minor restorative work, dressing, and casketing of the victim's remains;
- g. Public notice of the death and the time and place of funeral service;
- h. Transportation of the body to the funeral home;
- i. Transportation of the body and casket by a funeral coach to the cemetery;
- j. Travel expenses; and
- k. Use of facilities for a funeral service.

2. If a collateral source is available to pay any part of the funeral and burial expenses, the division may not pay compensation under this section for any amount over the aggregate total amount of five thousand dollars.

3. The claimant shall submit itemized receipts for reimbursement under this section.

4. The division may not pay compensation for funeral and burial expenses if the victim died as a result of a pre-existing medical condition and not as a result of the criminally injurious conduct.

History: Effective January 1, 2017.

General Authority: NDCC 44-08-04, 54-06-09, 54-23.4-01, 54-23.4-04

Law Implemented: NDCC 44-08-04, 54-06-09, 54-23.4-01

CHAPTER 94-03-04 REHEARING OR APPEAL

Section

<u>94-03-04-01</u>	<u>Administrative Notice of Decision</u>
<u>94-03-04-02</u>	<u>Informal Review</u>
<u>94-03-04-03</u>	<u>Administrative Hearing</u>
<u>94-03-04-04</u>	<u>Final Decision</u>

94-03-04-01. Administrative notice of decision.

1. After the division has received an application for crime victims benefits and has completed its initial investigation of the claim, the division shall issue a notice to the claimant that it has accepted the claim, denied the claim, reduced the claim, or is conducting further investigation.
2. If a claimant disagrees with the decision provided in the administrative notice of decision that the division has denied the claim or reduced the claim, the claimant may request an informal review. The claimant's request for informal review must be submitted to the division in writing within thirty days from the date of notice of the division's decision.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 54-23.4-07

94-03-04-02. Informal review.

If a claimant requests informal review of a claim under North Dakota Century Code section 54-23.4-07, the division shall review the request, conduct any additional investigation it determines in its discretion is necessary, and notify the claimant, or the claimant's authorized representative, if applicable, by a written order, including findings of fact and conclusions of law in support of the division's order if the division has reduced or denied the claim. The division shall provide the claimant notice of the provisions of North Dakota Century Code sections 28-32-40 and 28-32-42 with its order reducing or denying benefits.

If a claimant disagrees with the division's findings of fact, conclusions of law, and order reducing or denying benefits after informal review, the claimant may:

1. Request reconsideration and an administrative hearing in accordance with North Dakota Century Code section 28-32-40.
2. Appeal the order of the division to the district court in accordance with North Dakota Century Code section 28-32-42.

History: Effective January 1, 2017.

General Authority: NDCC 28-32-40, 28-32-42, 54-23.4-04

Law Implemented: NDCC 28-32-40, 28-32-42, 54-23.4-07

94-03-04-03. Administrative hearing.

If a claimant requests reconsideration of a claim in accordance with North Dakota Century Code section 28-32-40 and has requested an administrative hearing, the division shall refer the matter to the office of administrative hearings for further proceedings in accordance with the rules of the office of administrative hearings.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 28-32-40, 54-23.4-07, 54-57-03

94-03-04-04. Final decision.

Based on the testimony received; the evidence provided; the results of any independent investigation; and the recommended findings of fact, conclusions of law, and recommended order, the division shall enter its final decision as determined by the director of the division.

History: Effective January 1, 2017.

General Authority: NDCC 54-23.4-04

Law Implemented: NDCC 28-32-39, 54-23.4-15